JD(SF)—65—05
Las Vegas, Nevada

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

U-HAUL CO. OF NEVADA, INC. and U-HAUL INTERNATIONAL, INC, a Single Employer	Cases 28-CA-18575 28-CA-18755 28-CA-18863
AMERCO, U-HAUL INTERNATIONAL, INC., U-HAUL CO. OF NEVADA, INC., and OXFORD LIFE INSURANCE COMPANY, a Single Integrated Enterprise	28-CA-18918 28-CA-18919 28-CA-18967 28-CA-18974
AMERCO, FIVE SAC SELF-STORAGE CORPORATION, SAC HOLDING CORPORATION, and SAC HOLDING CORPORATION II, operating together as a joint venture	28-CA-19045 28-CA-19135 28-CA-19137 28-CA-19138
And	28-CA-19217 28-CA-19221
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 845, AFL-CIO	28-CA-19244 28-CA-19318 28-CA-19417 28-CA-19419
And	28-CA-18783
SCOTT J. HILL, An Individual	
And	
U-HAUL COMPANY OF NEVADA, INC. and U-HAUL INTERNATIONAL, INC, a Single Employer	
And	28-CA-19998 28-CA-20048
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 845, AFL-CIO	

Nathan W. Albright, Esq. and Stephen E. Wamser, Esq.
of Las Vegas, Nevada, for the General Counsel.

Gregory J. Kamer, Esq. and Edward A Keller, Jr., Esq.
(Kamer, Zucker and Abbott) of Las Vegas, Nevada,
for Respondent U-Haul Co. of Nevada, Inc.

Gregg J. Tucek, Esq., (Sherman & Howard)
of Phoenix, Arizona, for Respondent,
U-Haul Co. of Nevada, Inc.

Gary Birnbaum, Esq.
(Mariscal, Weeks, McIntyre & Friedlander)
of Phoenix, Arizona, for Respondents,
U-Haul International, Inc.,
Oxford Life Insurance Co. and AMERCO.

Lawrence D. Levien, Esq., Leslie M. Turner, Esq.
and Joshua B. Waxman, Esq.
(Akin, Gump, Strauss, Hauer & Feld)
Washington, D.C., for Respondents AMERCO,
U-Haul International, Inc.
and Oxford Life Insurance Company.

Sean McFarland, Esq.,
U-Haul International, Phoenix, Arizona,
for Respondent U-Haul International, Inc.,

Libby Petrie, Esq., U-Haul International
of Phoenix, Arizona, for Respondents AMERCO,
U-Haul International, Inc. and
Oxford Life Insurance Company.

Kevin T. Ahern, Esq., (Broening, Oberg, Wood & Wilson)
of Phoenix, Arizona, for Respondents,
Five Sac Self-Storage Corporation,
Sac Holding Corporation and Sac Holding Corporation II.

James F. Bowles, Esq. (Hill, Farrer and Burrill)
of Los Angeles, California, for Respondents,
Five Sac Self-Storage Corporation, Sac Holding
Corporation and Sac Holding Corporation II.

Charles Toby, Grand Lodge Representative,
International Association of Machinists and
Aerospace Workers, AFL-CIO
-of Folsom, California, for Charging Party,
International Association of Machinists and
Aerospace Workers Local Lodge 845, AFL-CIO.

James Michel, Grand Lodge Representative
International Association of Machinists and
Aerospace Workers, AFL-CIO
of Las Vegas, Nevada, for Charging Party,
International Association of Machinists and
Aerospace Workers Local Lodge 845, AFL-CIO.

DECISION

Procedural History of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in Las Vegas, Nevada, after 65 days of hearing over a17-month period from January 12, 2004 to June 28, 2005. I presided over a trial involving 10 parties, represented by 17 attorneys and representatives, who produced over 11,000 pages of transcript and 680 exhibits.

This massive record was ultimately the result of a representation petition filed by the Charging Party, International Association of Machinists and Aerospace Workers Local Lodge 845, AFL-CIO (Union) in case 28-RC-6159 on March 7, 2003 to represent a unit of mechanics employed by the Respondent U-Haul Company of Nevada, Inc., (UHN) at its Henderson and Las Vegas, Nevada repair shops. The Union won the election and was certified by the Board as the collective bargaining representative on February 9, 2004. From the time the petition was filed until January 13, 2004, when this trial commenced, 15 charges had been filed, 4 complaints issued, 41 employees had been terminated, the Henderson facility was closed and UHN chose not to recognize or bargain with the Union.

I. The Complaints

A. The Fourth Consolidated Complaint

In his fourth consolidated complaint issued December 24, 2003, the General Counsel alleged that Respondent UHN had violated the following sections of the Act: Section 8(a)(1) of the Act by, inter alia, threatening employees with plant closure and termination, creating an impression that their union activities were under surveillance, promulgating an overly broad no-solicitation rule, interrogating employees about their union activities, telling employees it was futile to select the Union and by terminating supervisor Scott Hill; Section 8(a)(3 of the Act by closing the Henderson repair facility, by discharging 41 employees, by issuing written warnings to employees, by changing employees' terms and conditions of work, and by changing subcontracting practices and; Section 8(a)(5) of the Act by refusing to recognize and bargain with the Union, by refusing to provide information to the Union relevant and necessary to its role as bargaining representative and by making unilateral changes. General Counsel sought a remedial bargaining order due to the severity of the alleged unfair labor practices and an order directing Respondent UHN to reopen its Henderson repair facility. Respondent UHN timely denied any wrongdoing.

B. The Fifth Consolidated complaint

On February 5, 2004, after 15 days of trial, General Counsel issued his Fifth Consolidated complaint. The fifth consolidated complaint added Respondents U-Haul Company, International lnc., (UHI), AMERCO, Oxford Life Insurance Company (Oxford) Five Sac Self-Storage Corporation (Five Sac), Sac Holding Corporation (Sac Holding) and Sac Holding Corporation II (Sac Holding II), and alleged that Respondents UHN and UHI were a single employer, that Respondents UHN, UHI, AMERCO and Oxford were a single integrated employer and that Respondents AMERCO, and the Five SAC Companies were a joint venture.[1] At the hearing on February 6, 2004 Counsel for the General Counsel (CGC) moved to consolidate the fourth and fifth consolidated complaints. I directed that all of the parties file

[1] The Respondents added to this proceeding in my February 23, 2004 order are referred to collectively as the New Respondents.

briefs by February 13, 2004. In their brief and at the hearing on February 23, 2004, as well as in their post-hearing brief, New Respondents argued that their addition after 14 days of hearing denied New Respondents due process of law. After considering the parties' briefs and hearing oral argument on February 23, 2004, I found that the claims against the new Respondents were essentially derivative in nature, did not deprive them of due process of law and ordered the cases consolidated for hearing.[2] I adjourned the hearing to March 15, 2004 to give the New Respondents time to prepare for trial.

C. The Amendments to the Fifth Consolidated complaint

During the course of the resumed hearing CGC amended the Fifth Consolidated complaint.

On May 27, 2004, after UHN Henderson repair facility manager Terry Hill's testimony, CGC, without objection, moved to amend the 5th complaint to allege Respondents violated Section 8(a)(1) of the Act by suspending and discharging Hill for refusing to commit or assist in committing unfair labor practices. I granted the amendment.

On June 2, 2004, CGC moved to amend paragraph 7(e) of the 5th complaint, over Respondents' objections, to allege the discharge of employee Mark Nance as a violation of Section 8(a)(3) of the Act. I granted the motion. I found the amendment closely related to extant charges involving paragraph 7(e) of the 5th complaint and that it would not cause undue prejudice to Respondents given the length of time remaining in the trial. *Payless Drug Stores*, 313 NLRB 1220, 1220-1221 (1994); *Redd-I, Inc*., 290 NLRB 1115 (1988).

On June 15, 2004, CGC moved to amend paragraph 7(o) of the 5th complaint, over Respondents' objections to allege the discharge of Heath Williams as a violation of Section 8(a)(3) of the Act. For the reasons cited above, I granted the motion.

On June 16, 2004, CGC made a motion to amend paragraph 7(a) of the 5th complaint, over Respondents' objections, to allege Respondents' refusal to rehire J.J. Medeiros as a violation of Section 8(a)(3) of the Act. I granted the motion noting it was a mere technical amendment since other employees Respondents refused to hire had previously been named as discriminates.

On June 23, 2004, CGC moved to amend paragraph 7(r) of the 5th complaint, without objection, to add the Respondents issued an undeserved warning to Jimmy Pagtulingan in violation of Section 8(a)(3) of the Act. I granted the amendment.

On September 17, 2004, after Heath William's testimony, CGC moved to amend paragraph 6(ll) of the 5th complaint[3], without objection, by adding a *Johnnie's Poultry* allegation concerning the alleged interrogation of Heath Williams by a private investigator. I granted the amendment.

[2] In my order consolidating cases, read into the record at transcript pages 2672-2683, I found that while issues of derivative liability could be deferred to the compliance stage of proceedings, the consideration of both unfair labor practice issues and derivative liability in one proceeding would be the most efficient use of the Board's time. Relying on *BMI Sportswear*, 283 NLRB 142, 154, fn. 23 (1987) and *Key Coal Co*., 240 NLRB 1013, 1016 (1979), I concluded that New Respondents were not denied due process of law.

[3] General Counsel's exhibit 473.

Respondents denied any wrongdoing alleged in the amendments.

D. The May 28, 2004 complaint

On May 28, 2004, the Region issued a consolidated complaint and notice of hearing against Respondents in cases 28-CA-19318, 28-CA-19417 and 28-CA-19419. The complaint alleged the unlawful discharge of two employees, the layoffs of two employees, unilateral changes and the failure to furnish information and to bargain with the Union. On June 14, 2004, CGC moved to consolidate the May 28 complaint with the 5th complaint over Respondents' objections. I granted the motion to amend, noting the length of time still remaining in the case together with the month-long recess that would occur at the conclusion of CGC's case. *Service Employees Local 87 (Cresleigh Management),* 324 NLRB 774, 775-776 (1997). Respondents denied any wrongdoing alleged in the May 28, 2004 complaint.

E. The December 29, 2004 Consolidated complaint

On December 29, 2004, the Regional Director issued a Consolidated complaint in cases 28-CA-19998 and 28-CA-20048 against Respondents UHN and UHI based on charges filed by Charging Party in case 28-CA-19998 on October 25, 2004 and in case 28-CA-20048 on November 24, 2004 and amended on December 17, 2004. The complaint alleged threats not to promote employees and a refusal to promote an employee in violation of Sections 8(a)(1), (3) and (4) of the Act and numerous unilateral changes to employees' terms and conditions of employment in violation of Section 8(a)(1) and (5) of the Act.[4] Respondents denied any wrongdoing alleged in the December 29, 2004 complaint.

F. The February 16, 2005 Motion to Reopen Record and Consolidate Cases

General Counsel filed his Motion to Reopen Record in Cases 28-CA-18575 et. al. and to consolidate cases 28-CA-19998 and 28-CA-20048. On February 18, 2005, I issued a Notice to Show Cause giving all parties until February 28, 2005 to respond to General Counsel's motion. Neither Respondents nor Charging Party filed a response. On April 29, 2005, I issued an Order granting counsel for the General Counsel's motion to reopen record in Cases 28-CA-18575, et al. and to consolidate cases since the issues presented in cases 28-CA-19998 and 28-CA-20048 involved the same Respondents and the same issues of single employer joint liability as those in cases 28-CA-18575, et al. The hearing was scheduled for June 27, 2005, in Las Vegas, Nevada.

II. Motions and Special Appeals

A. The Special Appeal to the Board

The Respondents requested of the Board special permission to appeal my order consolidating the 4th and 5th complaints. On March 10, 2004, the Board denied Respondents' requests for special permission to appeal my ruling but granted Respondents' a continuance in the trial to no less than May 10, 2004. Thereafter, on March 18, 2004, I ordered the trial to resume on May 24, 2004.

[4] At the hearing, General Counsel moved to amend the December 29, 2004 complaint to add paragraph 6(b) alleging that Respondents' violated Section 8(a)(1) of the Act when shop manager Mark Hayes denigrated Unit employees because the Union had filed charges on their behalf and by requesting that Unit employees bypass the Union and the Board and deal directly with Respondents concerning terms and conditions of employment. I granted General Counsel's motion.

B. Motions to Continue the Hearing

On April 16, 2004, New Respondents filed a motion seeking to continue the hearing to June 21, 2004. On April 27, 2004, I denied New Respondents' motion. On May 13, 2004, New Respondents requested special permission from the Board to appeal my April 27 order.[5] On May 20, 2004, the Board denied New Respondents' motions for lack of merit.

Finally, on May 20, 2004, New Respondents filed an emergency motion for a continuance to prepare for and attend an injunction hearing on May 26, 2004, in the Federal District Court in Phoenix, Arizona, where, New Respondents sought to enjoin the Board from pursuing the instant proceeding.[6] On May 21, 2004, I denied New Respondents' motion. However, on May 24, 2004, after the hearing resumed, with CGC's agreement, I granted an adjournment in the hearing from 1:00 p.m. on May 25 to 10:00 a.m. on May 27, 2004 for the parties to attend the May 26, District Court hearing.

On May 24, 2004, the trial reconvened with all of the issues enumerated above but now with the added issues of single employer, single integrated enterprise and joint venture. Respondents denied that they were any form of joint employer or that they had violated the Act. In addition Respondents offered numerous affirmative defenses including a denial of due process by being joined after 15 days of hearing and solicitation by the CGC of the charges that resulted in their joinder to the case. Respondents fully participated in the resumed hearing and examined and cross-examined witnesses and offered documentary evidence.

On June 1, 2005, Respondent UHN filed a motion for indefinite continuance of hearing and stay of all proceedings. On June 3, 2005, Counsel for the General Counsel filed his opposition to Respondent's motion. On June 16, 2005, I denied Respondent's Motion.

C. The Motion to Disqualify the Administrative Law Judge

On July 7, 2004, New Respondents filed a motion to disqualify the administrative law judge. CGC filed an opposition to New Respondents' motion. On July 13, 2004, I denied New Respondent's motion both on the record and in writing.[7]

D. SAC Respondents' Motion to Dismiss the complaint

On August 25, 2004, the SAC Respondents filed a motion to dismiss complaint at the conclusion of counsel for the General Counsel's case. I took the motion under submission. The motion is renewed in the post-trial brief of the SAC Respondents. For the reasons set forth below in footnote 8, I will dismiss the allegations of the 5th complaint, as amended, and those portions of the May 28, 2004 complaint as they relate to SAC Holding II. With respect to the remaining SAC Respondents, for the reasons discussed below at page 19 in section III, D, 3, the SAC Respondents' motion to dismiss complaint is denied.

[5] Meanwhile, on April 22, 2004, New Respondents filed a motion with the Board to enforce the Board's March 10, 2004 order, seeking, inter alia, a continuance of the hearing to June 21, 2004.

[6] The injunction was denied by the District Court and the matter is now before the United States Ninth Circuit Court of Appeals.

[7] ALJ exhibit 1 and transcript at 6443-6452.

Issues

The issues to resolve in this decision are too numerous to list in detail here. However, generally the issues fall into five categories that will be discussed in the following pages. Initially, the question of the Respondents' status as single employer, single integrated enterprise and joint venture will be analyzed. Next I will consider numerous allegations that Respondents violated Section 8(a)(1) of the Act by, inter alia, threatening employees with discharge and plant closure, by interrogating employees about union activities, by prohibiting employees from discussing the Union, by threatening to shoot union representatives and by discharging supervisors. A multitude of allegations that Respondents violated Section 8(a)(3) of the Act will next be considered including over 40 allegations of unlawful discharges, 12 unlawful warnings, imposition of a hiring freeze, changes in work rules, unlawful subcontracting of bargaining unit work, more stringent enforcement of efficiency ratings and closing the Henderson repair facility. Allegations that Respondents violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Union, refusing to provide information and by making a host of unilateral changes will be discussed together with whether a *Gissel* bargaining order is appropriate. Finally whether restoration of the status quo by ordering reopening of the Henderson repair facility is appropriate will be considered in the remedy section.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following:

Findings of Fact

I. Jurisdiction

A. AMERCO

Respondent AMERCO, a Nevada corporation, with an office located in Reno, Nevada, has operated as a holding company for UHI and Oxford. During the past 12 months AMERCO has derived gross revenues in excess of $500,000, including at least $50,000 of revenues from the operations of Oxford. I find that Respondent AMERCO is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. Oxford Life Insurance Company

Respondent Oxford, an Arizona corporation with an office and place of business at 2727 North Central Avenue, Phoenix, Arizona, known as the Towers, has been engaged in the business of the sale of insurance policies. Oxford has received insurance premiums valued in excess of $500,000 of which $50,000 in premiums was received from policyholders located outside the State of Arizona. I find that Respondent Oxford is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

C. U-Haul Co. of Nevada, Inc.

Respondent UHN is a Nevada corporation engaged in the business of renting and repairing rental trucks and trailers at its facilities located at 989 S. Boulder Highway, Henderson, Nevada (Henderson repair shop) and 1900 S. Decatur Boulevard, Las Vegas, Nevada (Decatur repair shop), where it annually derived gross revenues in excess of $500,000 and, purchased and received goods valued in excess of $50,000 directly from points located outside the State of Nevada. I find that Respondent UHN is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

D. U-Haul International, Inc.

Respondent UHI, a Nevada corporation with an office and place of business at the Towers, has been engaged in providing accounting, data processing, human resources and communications services to UHN. During the past 12 months UHI has derived gross revenues in excess of $500,000 from sources located outside the State of Arizona, including at least $50,000 of revenues derived from the operations of UHN located outside the State of Arizona. I find that Respondent UHI is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

E. Five SAC Self Storage Corporation

Respondent Five SAC, a Nevada corporation with an office and place of business located at 715 South Country Club Drive, Mesa, Arizona, has been engaged in the business of purchasing and developing self-storage properties, including the property where the Henderson repair facility is located. During the past 12-month period, Five SAC derived gross revenues in excess of $500,000, including at least $50,000 of revenues derived from the operations of UHN. I find that Respondent Five SAC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

F. SAC Holding Corporation

Respondent SAC Holding Corporation, a Nevada corporation with an office and place of business at 715 South Country Club Drive, Mesa, Arizona, has operated as a holding company for several corporations that own self-storage facilities including Five SAC. During the past 12-month period, SAC Holding derived gross revenues in excess of $500,000, including at least $50,000 of revenues derived from the operations of other SAC entities located outside the State of Arizona. I find that Respondent SAC Holding Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[8]

II. Labor Organization

International Association of Machinists and Aerospace Workers, Local Lodge 845, AFL-CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

[8] No evidence was offered concerning the commerce allegations of the 5th Complaint regarding SAC Holding II Corporation. GC exhibit 440, amendments to the 5th Complaint, omits any reference to SAC Holding II Corporation. I will dismiss those portions of the 5th Complaint as to SAC Holding II Corporation.

III. The Single Employer, Single Integrated Enterprise and Joint Venture Issues

CGC alleges at paragraph 2(t) of the 5th complaint that Respondents UHN and UHI constitute a single integrated business enterprise and a single employer within the meaning of the Act. Paragraph 2(w) of the 5th complaint, as amended, alleges that Respondents UHN, UHI, AMERCO and Oxford constitute a single integrated business enterprise. The 5th complaint, as amended, at paragraph 2(aa) alleges that Respondents AMERCO, UHI, Five SAC and SAC Holdings have operated together as a joint venture to purchase, develop, operate and hold ownership of the Henderson property that includes the Henderson repair facility.

A. The U-Haul System

U-Haul was founded in 1945 by L.S. "Sam" Shoen, father of Edward, James and Mark Shoen. Since 1945 U-Haul has rented trailers and from 1959, trucks on a one-way and in-town basis, through independent dealers. In 1974, U-Haul developed a network of rental centers through which U-Haul also rents trucks, trailers and provides related products and services. As of March 31, 2003, U-Haul's distribution network included 1,350 centers operated by over 100 marketing companies (MCO) like UHN. AMERCO is the parent holding company for all U-Haul system subsidiaries including UHI. UHI holds the stock of over 100 local marketing companies in North America, including UHN, and provides administrative and technical support to the marketing companies. During the 1990's AMERCO expanded its self-storage business and SAC Holdings and its subsidiaries was established by AMERCO as a vehicle to finance this expansion. The self-storage properties are owned by subsidiaries of SAC Holding, including Five SAC and are managed by U-Haul subsidiaries including UHN. SAC Holding financed the purchase of the self-storage properties through significant borrowing from AMERCO and third-party lenders. AMERCO and its subsidiaries are entitled to share in SAC Holdings excess cash flow. AMERCO has no equity interest in SAC Holding and is not liable for the debts of SAC Holding nor is SAC Holding liable for AMERCO's indebtedness. Mark Shoen, a significant shareholder of AMERCO and executive officer of UHI, owns all of the equity interest of SAC Holding.[9]

B. The U-Haul System Members

1. AMERCO

Today there is a web of interrelated corporations known as the "U-Haul System." At the center of this web is AMERCO, a holding company for the stock of UHI, Oxford, AMERCO Real Estate Company and Republic Western Insurance Co. AMERCO is headed by president, director and board chairman Edward J. "Joe" Shoen who is also chairman of the Board of directors and president of UHI. In describing the U-Haul System hierarchy of command, "Joe" Shoen has said that,

> In the Amerco system, I, Joe Shoen, am presently the leader. Within this larger peak (organization) are smaller and smaller groups with their respective leaders. As to those leaders directly under me, I exercise the right of decision and command, just as they, in turn, exercise this right to those subordinate to them.[10]

---

[9] GC exhibit 450, page 15, "Disclosure Statement Concerning the Debtors' Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code."

[10] GC exhibit 127, page 164.

AMERCO through Joe Shoen was intimately involved in the day-to-day activities of the marketing companies such as UHN. Joe Shoen's memo of September 3, 2002 to marketing company presidents and shop managers, is representative of his direct involvement in the local U-Haul marketing companies. Shoen goes into great detail about evaluating mobile repair unit employees (MRU), who work for the local U-Haul marketing companies. Shoen notes in the memo,

> 4. As the responsible member of general management, Joe (Shoen), GM, or MCP (marketing company president), must evaluate these people's performance and take appropriate action. If these people can't fix our trucks and buildings, then we are better off without them.[11]

AMERCO's directors include Joe Shoen, his brother James Shoen, Charles Bayer, John Brogan, Joe Shoen's uncle, William Carty, John Dodds, James Grogan, and M. Frank Lyons, a Shoen in-law.

The senior managers of AMERCO are listed , in GC exhibit 450 at page 24, as Gary Horton, the treasurer of AMERCO and assistant treasurer of UHI, Gary Klinefelter, the secretary and general counsel of both AMERCO and UHI, Rocky Wardrip, the assistant treasurer of AMERCO, Mark Shoen, the president of UHI operations in Phoenix, director of UHI Tech Center, sole director and owner of Five SAC Self Storage Corp., SAC Holding Corp and SAC Holding Corp II, John Taylor, the director and executive vice president of UHI, Ronald Frank, the executive vice president of UHI field operations, Mark Haydukovich, the president of Oxford Life, Carlos Vizcara, the president of Amerco Real Estate Co., and Richard Amoroso, the president of Republic Western Insurance Co.

Forty three percent of the stock of AMERCO is owned by the Shoen brothers, including 16.9% by Edward "Joe" Shoen, 16.3% by Mark Shoen and 9.9% by James Shoen.

2. UHI

UHI stock is wholly owned by AMERCO. UHI in turn owns the stock in all of its subsidiary marketing companies throughout the United States and Canada, including UHN, which rent and repair rental trucks and trailers to do-it-yourself moving customers. The president of UHI is Joe Shoen. Mark Shoen, Joe's brother, is head of the UHI Phoenix operation. UHI, located at the Towers in Phoenix, Arizona, owns over 92,000 trucks that are rented through local marketing companies like UHN throughout the United States and Canada. Those trucks rented on a "one way" or city-to-city basis are serviced and repaired at repair facilities called "key city" repair shops throughout the United States, like the Henderson, Nevada facility operated by UHN.

UHI functions as a clearing house and provides such services as accounting, sales and reservations, technical assistance for vehicle repair and maintenance, employee benefits, labor relations, drug testing, recruiting, computer services, and supervision of repair facilities for all of its marketing companies.

UHI operates a Technical Center (tech center)located in Tempe, Arizona, a suburb of Phoenix, Arizona that provides supervision to the key city repair shops through Repair Vice Presidents, including Bob Miner (Miner) and Dan Fowler (Fowler) who report to Mark Shoen. The tech center issues written policy that the repair shops are required to follow.

[11] GC exhibit 140.

UHI also has a Human Resources Department that was headed during the relevant period herein by UHI Vice President of Human Resources, Henry Kelly (Kelly). The Human Resources department establishes all labor relations policy for the MCOs, including UHN as well as UHI, AMERCO, Oxford, Rep West and Real Estate. The UHI Human Resources Department sends the employee handbook entitled *Welcome Aboard Booklet* to all new employees of MCOs, AMERCO, Oxford, RepWest and Real Estate. The handbook contains policy on such matters as solicitation, personal conduct, appearance, gambling, drug and alcohol use and safety. In addition it explains benefits for employees of all U-Haul system companies, including medical and life insurance, vacation, and sick leave. The Human Resources Department distributes the System Member Confidentiality Agreement[12] to any new employee of any AMERCO subsidiary.

In addition the UHI *Human Resources Policy Manual for Company Presidents and Managers*[13] is a compilation of all labor relations policies that all UHI related companies, including UHN, must follow. The preamble to this manual notes that, "U-Haul companies or departments that may wish to issue individual procedures for their areas regarding personnel must be sure that these procedures are reviewed by U-Haul Human Relations."

3. U-Haul Business Consultants, Inc.

UHI owns all of the stock in a subsidiary called U-Haul Business Consultants, Inc. (UHBC)[14] which is located at the Towers in Phoenix. UHI pays UHBC a flat fee pursuant to an agreement negotiated annually. However, UHI issues paychecks to UHBC employees. UHBC provides services to the MCOs, including UHN, to assist the MCOs perform their duties. Joe Shoen is the president and only director of UHBC. The officers of UHBC are Gary Klinefelter and George Olds. Ronald Frank is Executive Vice President and Senior Consultant for UHBC. UHBC, through its area district vice presidents (ADVP), supervise the local marketing companies like UHN. The UHI *Roadman Training Program* states that MCOs report to the ADVP and the ADVP reports to the CEO of UHI.[15] Ronald Frank appointed his son Jeremy Frank an ADVP for UHBC to oversee several MCOs, including UHN.

4. UHN

The stock of UHN is wholly owned by UHI. As an MCO, UHN rents moving trucks and supplies and operates repair facilities that maintain and repair U-Haul's fleet of trucks and trailers. UHN and UHI are parties to a service contract, under which UHI for a fee provides UHN with management and administrative services.

Each of the U-Haul MCOs, including UHN, has a standard set of directors, including Ronald Frank, Executive Vice President of UHI Field Operations, the Area District Vice President of UHBC and the president of the local marketing company. The officers of UHI, Joe Shoen, Gary Kleinfelter, and Gary Horton, elect the directors of each marketing company, including UHN. The marketing company officers are likewise standardized and include AMERCO and UHI General Counsel Kleinfelter as Secretary and AMERCO and UHI Assistant General Counsel George Olds as Assistant Secretary.

[12] GC exhibit 2(a).
[13] GC exhibit 408.
[14] UHBC is not named as a Respondent in these proceedings.
[15] GC exhibit 127 at page 180.

UHN's presidents during the relevant periods involved here were Sterling Hogan Sr. (Hogan) and Mario Lanza (Lanza). Hogan was appointed UHN president in June 2003 by UHI Executive Vice President Ronald Frank. Before May 2004, neither Lanza nor Hogan was involved in the day-to-day operation of UHN's repair shops. Prior to December 2003, the chain of command at the UHN Henderson repair facility was repair shop managers Terry Hill (T. Hill) or Michael Jordan (Jordan) to UHI vice presidents Kelly, Fowler or Miner. Not until May 2004 did Hogan advise UHN repair shop employees that he was in the chain of command. Hogan explained that the chain of command at the UHN repair facility was manager Jordan, Hogan and Jeremy Frank, UHN's Area District Vice President at UHBC.

UHN maintains a local bank account in the name of or on behalf of UHI. On a daily basis, UHI collects the money deposited by UHN in the bank account then applies the funds to various bills and other obligations. The excess funds are not returned to UHN but are retained by UHI for any disbursement such as a declared dividend to UHI stockholders. All employee benefits including health and life insurance are provided to UHN employees through the U-Haul family of companies such as Oxford Life. All paychecks for UHN employees are provided by UHI.

5. Five SAC Self Storage Corporation

During the 1990's AMERCO expanded its self-storage business and SAC Holdings and its subsidiaries was established by Joe and Mark Shoen as a vehicle to finance this expansion. The self-storage properties are owned by subsidiaries of SAC Holding, including Five SAC and are managed by U-Haul subsidiaries, including UHN. SAC Holding financed the purchase of the self-storage properties through significant borrowing from AMERCO. In a July 2002 memo[16] to Joe Shoen AMERCO Treasurer Gary Horton stated:

> Various AMERCO entities have been involved with SAC since SAC's inception. We funded third-party acquisitions for them. We funded construction dollars directly and indirectly utilizing our credit line and synthetic lease facilities. We sold properties and financed and arranged financing. We managed the locations and paid the bills for them. They purchased inventory and supplies from us. They reimburse us for our expenditures and pay interest on their loans. We do their accounting and we service their loans.

Five SAC is wholly owned and operated by Mark Shoen, its president and sole stockholder. UHI Management Information Analysis Division senior director Bruce Brockhaven is the secretary/treasurer of all the Five SAC companies. On about March 31, 2004, Mark Shoen set up a new corporation, Blackwater Investment, Inc. which, owns all of the stock of the Five SAC companies. Mark Shoen is sole stockholder of Blackwater. Five SAC/Blackwater has an office in Mesa, Arizona, with no employees, no files and no dedicated telephone number.

Brockhaven conducts day to day operations of the Five SAC companies at UHI offices at the Towers in Phoenix. All support functions for the Five SAC companies are performed by UHI employees without compensation from Five SAC. Brockhaven receives no compensation from the Five SAC Companies.

Five SAC bought the land where the Henderson repair facility was built for $1, 300,000. Five SAC built the Henderson facilities including self-storage buildings, the repair facility and a rental center and leased the rental center and repair facility to UHN. UHN managed the self-

[16] General Counsel's exhibit 144, p. 44.

storage facility for Five SAC for 6% of gross revenue. The Property Management Agreement[17] at paragraph 1(b) provided that UHN and Five SAC were not "partners or joint venturors."

In "an accommodation to Oxford" Mark Shoen agreed to sell the Five SAC Henderson property along with up to twelve others to Oxford in June 2003. Oxford was allowed to pick and choose which properties they would purchase from Five SAC. At the time of the sale the Henderson property had a fair market value of $7,500,000.

6. Oxford

Oxford Life, like UHI, is wholly owned by AMERCO. Oxford provides insurance benefits, such as life and medical insurance to the employees of AMERCO's subsidiaries including UHI and UHN. Mark Haydukovich, listed in GC exhibit 450 as a member of AMERCO's senior management is president of Oxford.

C. Development, Operation and Sale of the Henderson, Nevada facility

1. AMERCO, Oxford, Five SAC and UHN Involvement in Henderson

In about 2000, Mark Shoen decided that a new repair facility should be opened in the Las Vegas, Nevada area to maintain U-Haul's fleet of moving trucks and trailers coming into the southern Nevada area. A property was identified by Amerco Real Estate and purchased by Five SAC. The purchase was financed by AMERCO but UHI makes the payments on Five SAC's indebtedness. While UHI manager of storage operations, Dennis O'Connor, testified that AMERCO gave the go ahead for acquisition of the Henderson property and, AMERCO's construction division determined the layout of the Henderson facilities, UHI's construction department designed and built the Henderson facility, including the repair facility.

The Henderson property includes a rental center to rent trucks, trailers and related moving items, a self-storage facility and a truck repair facility. Under a contract with Five SAC, UHN operates the self-storage facility and receives a per cent of the rents while Five SAC receives a per cent of the rents from the UHN rental center. UHN also leases the rental center and truck repair facility from Five SAC. Employees of UHN operate both the rental center and truck repair facility in Henderson.

In the summer of 2003 Five SAC sold the Henderson property to Oxford. At the time of sale the property was valued at $7,500,000. There is an agreement between Oxford and Five SAC to resell the Henderson property to Five SAC. After the sale of the property, Oxford leased the Henderson facility to Five SAC and Five SAC subleased the facilities to UHN.

2. UHI Involvement in Henderson

The Henderson repair shop opened in about September 2002. It was designated a key city repair shop by Mark Shoen in late 2002. The key city repair shops are referred to as "Mark's shops" in a June 26, 2003 UHI memo.[18] As a key city shop, Henderson performs service on the UHI fleet of trucks coming into the Las Vegas, Nevada area and is supervised by Repair Vice Presidents from the UHI Tech Center in Phoenix, Arizona, including Miner and Fowler.

[17] General Counsel's exhibit 217.
[18] GC exhibit 375(b).

The UHI *Roadman Training Program*, [19] a manual created by UHI for training its repair shop managers, is instructive on the question of UHI involvement with repair shops located at MCOs, like UHN. The manual notes, "In all cases but the Key Cities, the shop manager is directly accountable to the MCP (marketing company president)."[20] Also at page 180 the manual states, "Repair companies (except Key Cities) report to the relevant MCP (marketing company president), and effectively and economically maintain, repair and in some cases rebuild U-Haul products for the geographic area of the marketing company."[21] Fowler testified without contradiction that the contents of the *Roadman Training Program* dealing with requirements for preventative maintenance, benchmarks for repairs and campaigns or updates on servicing trucks were requirements for key city repair shops not suggestions.

Periodic audits of key city repair shops, including Henderson, were conducted by the UHI Tech Center. Mark Shoen ordered that any deficiencies found in audits be corrected. In the September 19, 2003 repair audit of the Henderson repair shop, Mark Shoen states to Michael Jordan:

> Final Repair Audit
>
> Please read and take prompt management action on each issue identified in the repair audit. Report to me in writing issue by issue, the specific management action you have taken and the action you will be taking. This response is your plan to improve the operations of your repair shop. Be specific as to the time you need to complete each step of your plan to manage. Your report should be e-mailed to me at Mark Shoen@fc.uhaul.com no more than 6 business days after receipt of the final audit. I will distribute your report to your Repair VP.
>
> Get with your Repair VP ASAP and seek counsel on what management action you are taking. Be sure to ask for the help of your Repair VP in responding to me as well. If you have any questions concerning what action you should take as a result of this audit, seek the counsel of your Repair VP.
>
> Any thorough audit identified violations of U-Haul programs, policies and procedures. Your job as manager is to treat these shortcomings as opportunities for you to demonstrate your ability to manage the repair and maintenance of the U-Haul fleet in your area.
>
> Please keep in mind that U-Haul programs, policies, and procedures are not "suggestions", they are direct orders on how to manage your area of responsibility. Any violations of this nature requires prompt action on your part.
>
> Thank you.
>
> Mark V. Shoen

At its inception, a budget was created for the Henderson repair shop by UHI and is called "Joe Shoen's repair budget"[22] in the *Roadman Training Program*. The repair shops were

[19] GC exhibit 127.
[20] GC exhibit 127 at page 3.
[21] Id. At page 180.
[22] Id. At page 8.

expected to comply with the budget.[23] UHI monitored the budgets and would call individual repair shops for an explanation of deviations from the budget.

It was the UHI tech center that made the decision to decertify Henderson as a UHI key city shop for allegedly failing to meet UHI quotas.[24] Employees at the UHI Tech Center determined whether to replace, repair, order further diagnostics or reject requests for engines serviced at the Henderson repair shop.

All data on truck inventory, repairs performed, parts ordered, employees hired, and payroll at the Henderson repair facility was transmitted on a daily basis to UHI in Phoenix through ARMS. ARMS is a UHI computer software program, that collects data at the UHI headquarters building in Phoenix, Arizona on all repair shops throughout the United States.

While the Henderson repair shop is operated by UHN employees, the employees reported to UHI repair vice president Fowler rather than UHN president Lanza.[25] Fowler selected T. Hill as Henderson's first shop manager and gave Hill authority to hire mechanics to staff the Henderson repair shop. Fowler dictated the Henderson shop layout and how many employees to hire. Fowler gave Hill a list of equipment for the Henderson repair shop to be ordered through UHI. Fowler called T. Hill on a weekly basis to check on the progress of the Henderson shop and told Hill to set up a time table for its opening.

According to Fowler, quotas for servicing trucks by the Henderson repair shop were set by the UHI tech center. At the time Henderson opened, Fowler told T. Hill that the Henderson shop should be servicing 15 trucks per week. Hill reported to Fowler, not UHN president Lanza, if the Henderson shop met its repair quotas that were set by Fowler.

D. Analysis of Single Employer, Single Integrated Enterprise and Joint Venture Issues

1. Single Employer

Paragraphs 2(s) and 2(t) of the 5th complaint allege that UHN and UHI constitute a single integrated business enterprise and a single employer within the meaning of the Act.

To determine whether more than one enterprise is a single employer, four primary factors are considered: (1) control of labor relations; (2) common management; (3) interrelation of operations; and (4) common ownership. *Radio & Television Broadcast Technicians Local Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256, 85 S.Ct. 876, 13 L.Ed.2d 789 (1965); *Proctor Express, Inc.,* 322 NLRB 281, 289-90 (1996). While presence of all four factors is not necessary, centralized control of labor relations is the "single most important factor in the analysis." *Dow Chemical Co.*, 326 NLRB 288 (1998) The Board has held that while common ownership alone is not sufficient to establish single employer status, single employer will be found where common ownership translates into actual or active common control. *Emsing's Supermarket*, 284 NLRB 302 (1987). In addition, the Board examines the management structure of the subsidiary, whether the subsidiary has authority over its employment terms and conditions and whether the parent and subsidiary have separate operations. *Wisconsin Educ.*

[23] GC exhibit 281.
[24] GC exhibit 375(a).
[25] Counsel for New Respondent's post-hearing brief erroneously asserts that T. Hill testified at transcript pages 2747-48 and 2752-54 that he reported to Lanza. Transcript pages 2747-2754 do not support such a claim.

Ass'n., 292 NLRB 68 (1989). Actual, rather than potential control by the parent is generally required. *Teamsters Local 391*, 208 NLRB 540, 543 (1974).

In this case each element necessary to establish single employer status is present. It is undisputed that there is common ownership between UHI and UHN. UHI owns all of the UHN stock.

There is a plethora of evidence concerning the most important factor, control of labor relations. UHI mandated among the various U-Haul system companies common policy concerning solicitation, personal conduct, appearance, gambling, drug and alcohol use and safety. In addition it established benefits for employees of all U-Haul system companies, including medical and life insurance, vacation, and sick leave.

The actual rather than potential control of labor relations and management by the parent UHI over UHN has been well established in the record. UHN managers like T. Hill, Jordan, Lanza and Hogan reported to UHI managers Kelly, Miner, Fowler and Mark Shoen not for a brief period of time as New Respondents suggest but from the inception of the Henderson repair facility. It was Fowler who set up the Henderson facility and hired T. Hill. Fowler gave Hill his marching orders concerning authority to hire employees and their production quotas. Kelly ran the union campaign and was the Henderson repair shop manager for over one month. Hill and Jordan were told to report to Kelly. It was Kelly who imposed a hiring freeze after he discovered union activities among the Henderson employees. It was Kelly who fired T. Hill. UHN presidents Lanza and Hogan took no part in the operation of the Henderson repair facility until May 2004. UHI manuals dictated that Lanza and Hogan, as MCO presidents, were to report to UHBC Area District Vice President Jeremy Frank. Shoen, Kelly, Fowler and Miner made fundamental decisions affecting hiring and firing of UHN employees. The decision to eliminate the Henderson repair facility as a key city shop was made by UHI management not by UHN.

Finally, the integration of operations among all of the U-Haul system companies is patent. All of the AMERCO and UHI publications describe the "U-Haul System" as a single integrated operation. Through Joe Shoen at the top of both AMERCO and UHI, through UHBC vice presidents directing and controlling marketing companies like UHN, through UHI policy concerning the maintenance of trucks, through the UHI tech center vice presidents directing the system wide maintenance programs at repair centers, through the use of Five SAC to acquire and develop storage facilities operated by MCOs, through the UHI Human Resources department developing and controlling labor relations policies for all U-Haul System companies, U-Haul has been designed to be and is an integrated operation.

Respondents' argument that UHN has independent control over its labor relations policies and practices is absurd. The argument that UHI serves merely in an advisory capacity is specious and is contradicted by voluminous specific examples of actual control by UHI management as noted above and infra. Jeremy Frank's self-serving and ill-informed statement that UHN has absolute discretion not to follow UHI policy is contradicted by both UHI documents and the testimony of UHI vice presidents Fowler, Miner and Kelly who stated without contradiction that MCOs, like UHN were bound to follow UHI policy. Frank's lack of day to day involvement during the period of time involved herein together with his lack of specific knowledge about the operative facts of this case leads me to believe he played a minor role in the UHI campaign against the Union which was directed by more experienced and senior UHI management.

I conclude that UHI and UHN is a single employer.

2. Single Integrated Business Enterprise

In paragraphs 2(v) and 2(w) of the 5th complaint CGC alleges that Respondents UHN, UHI, AMERCO, and Oxford constitute a single integrated business enterprise.

The elements that determine if distinct companies constitute a single integrated employer are similar to those applied above with respect to single employer. The same four elements of control of labor relations, common management, interrelation of operations, common ownership apply. The single employer analysis applies, "where two ongoing businesses are coordinated by a common master." *NYP Acquisition Corp*., 332 NLRB 1041 (2000).

AMERCO owns all the stock of Oxford and UHI. UHI in turn owns all the stock of UHN. Mark Shoen owns significant shares of AMERCO and is the sole owner of the Five SAC Companies.

The entire U-Haul System shares interrelated officers, directors and owners. Members of senior management are common officers in AMERCO, UHI, UHN, Oxford and the Five SAC entities. There is commonality among boards of directors of AMERCO, UHI, Oxford and UHN. Family members and friends control large blocks of voting stock in AMERCO and the Five SAC companies. Family members are commonly on U-Haul subsidiary boards of directors and are found as officers and senior management at U-Haul subsidiaries.

Labor relations policy is set for the entire U-Haul system of companies by the UHI Human Resources Department which answers ultimately to UHI and AMERCO President and CEO Joe Shoen.

Finally, the entire U-Haul system of companies has been set up to function together. Thus, under the AMERCO umbrella directed by President Joe Shoen the MCO's, including UHN, provide the infrastructure for the rental and maintenance of moving equipment and self-storage business. The Five SAC companies, wholly owned by Mark Shoen, a significant equity holder of AMERCO and a senior management official of UHI, provide for the acquisition of self-storage rental facilities operated by the MCOs. UHI, owned by AMERCO and run by its CEO Joe Shoen, owns the MCOs and provides administrative and technical support and policy direction not only to the MCOs but also to the other system companies, Oxford, Real Estate, and RepWest. Oxford, owned by AMERCO, provides life and health insurance benefits to the employees of siblings AMERCO, UHI, Real Estate, Rep West, the MCOs and its own employees.

I find that Respondents Five SAC, AMERCO, UHI, UHN, and Oxford are a single integrated business enterprise.

3. Joint Venture

Paragraph 2(aa) of the 5th complaint, as amended, alleges Respondents UHI, AMERCO, Five SAC and SAC Holding I and II operated as a joint venture to purchase, develop, operate and hold ownership of the Henderson property that contains the Henderson facility.

A joint venture is:

> [A] legal entity in the nature of a partnership engaged in a joint undertaking of a particular transaction for mutual profit. See also *National Football League*, 309

NLRB 78 (1992): By definition . . . a joint venture is a joint business undertaking by two or more parties who agree to share the risks as well as the profits of the venture. Unlike a partnership, Black's says (citing the Internal Revenue Code as authority), a joint venture does not entail a continuing relationship among the parties. *Operating Engineers Local 520, Massman Construction Co.,* 327 NLRB 1257, 1259 (1999).

Generally the Federal Courts have required the elements of an agreement to jointly share profits and losses of a joint undertaking as well as a right of joint control in order to find a joint venture. *Jackson v. East Bay Hospital*, 246 F. 3d 1248, 1261 (9th Cir. 2001); *Resolution Trust Corp. v. BVS Development*, 42 F. 3d 1206, 1214 (9th Cir, 1994); *Shaw v. Delta Airlines, Inc*., 798 F. Supp. 1453, 1456 (D. Nevada (1992). Although the sharing of profits and loss is prima facie evidence of a joint venture, the sharing of joint control is the more critical factor. *Shaw v. Delta Airlines, Inc.,* at 1456. A written agreement is not required to find that a partnership or joint venture exists. The trier of fact must look to the actions and relationships of the parties to determine if they have intended the things the law considers a partnership or joint venture. Id. The Board has held that each joint venturer is responsible as a principle and as an agent for the conduct of any other member of the venture undertaken in furtherance of the venture. *Great Lakes Dredge and Dock Company*, 240 NLRB 197, 198-199 (1979).

Contrary to the assertion of CGC the Board has not analyzed joint ventures under a single employer theory. In *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001), the General Counsel's complaint alleged that the alleged joint venturers constituted a single employer. There was no need for the Board to analyze whether a joint venture existed under this theory. Accordingly, the Board applied its four part single employer test. In determining whether a joint venture exists, the *Massman Construction* test should be applied.

The initial inquiry in determining if the single employer UHN UHI, AMERCO and Oxford entered into a joint venture with Five SAC and SAC Holding, is whether the joint venturers shared in the profits and losses from the purchase, development, operation and ownership of the Henderson property.

AMERCO's Disclosure Statement Concerning the Debtors' Joint Plan of Reorganization to the United States Bankruptcy Court for the District of Nevada[26] stated AMERCO and its subsidiaries are entitled to share in SAC Holdings excess cash flow. Thus, profits from the self-storage properties owned by SAC Holdings subsidiaries, including Five SAC flows to the single employer through AMERCO. UHN operates the self-storage facility on the Henderson property for 6% of the gross profits. Thus, the single employer through UHN shares in the profits of the self-storage facility. UHN and UHI also operate a rental center and the repair facility at the Henderson property. Five SAC receives a per cent of the rents from the UHN rental center operation on the Henderson property. There is a direct sharing of a share of profits from the operation of the storage facility and the rental center between UHN and Five SAC. Through UHN and UHI, the single employer shares in both the profits and losses of the Henderson property to the extent that the rental center and the repair facility operate at a profit or at a loss.

There is evidence that the single employer, through AMERCO, put its capital at risk in purchasing and developing the Henderson property. SAC Holding financed the purchase of self-storage properties, owned by its subsidiaries such as Five SAC, including the Henderson property, through significant borrowing from AMERCO. Thus, there is evidence of a sharing of

[26] GC exhibit 450, page 15, "Disclosure Statement Concerning the Debtors' Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code."

profits directly to AMERCO from SAC Holding and through UHN and UHI operating the Henderson property. Any profits from the sale of the Henderson property to Oxford would have inured to the benefit of AMERCO, since AMERCO shared in Five SAC excess cash flow. There is also evidence of shared loss through AMERCO putting substantial capital at risk in the purchase and development of the Henderson property and through UHI and UHN in the risk of operating the rental center and repair facility. The evidence that the repair center operated at a loss will be discussed below.

With respect to the important issue of joint control over the purchase, development, operation and ownership of the Henderson property, it was Mark Shoen, who is both UHI President Phoenix operations and the President of Five SAC and SAC Holdings who decided that a new repair facility should be opened in the Las Vegas, Nevada area to maintain trucks coming into the southern Nevada area. UHI Manager of Storage Operations, Dennis O'Connor, testified that AMERCO gave the go ahead for acquisition of the Henderson property and AMERCO's construction division determined the layout of the Henderson facilities, but UHI's construction department designed and built the facility which included a rental center to rent trucks, trailers and related moving items, a storage facility and a repair facility. As noted above, the storage facility, rental facility and repair center are operated by the single employer through UHN and UHI. Thus, in the decision to purchase, in the development and in its operation, there is joint control of the Henderson property by both the single employer, through UHN and UHI, and Five SAC and SAC Holding.

The Five SAC Respondents' argument that arms length landlord-tenant, mortgagor-mortgagee, or contractor and client relationships exist rather than a joint venture, ignores the reality of how interconnected these entities are.

Brockhaven and Mark Shoen said that the Five SAC Respondents have no employees. However, it is hard to imagine how multiple corporations like the Five SAC Respondents can operate dozens of self-storage properties throughout the United States without the assistance of some employees. The record reflects that the day to day work of the Five SAC companies is performed by employees of other U-Haul system companies, including UHI and AMERCO. The employees of UHI and AMERCO performing work for the Five SAC entities include Rob Manley, Jennifer Flackman, Michelle Cleveland and Bruce Brockhaven. None of these employees is compensated by the Five SAC companies. Thus, employees who perform the essential work of the Five SAC companies are controlled by the same labor relations policies as all other U-Haul system companies.

There is common management of the Five SAC companies by Brockhaven who is also a senior manager for UHI. Brockhaven performs most of the day to day managerial work for the Five SAC. Five SAC President Mark Shoen is also President of UHI Phoenix Operations.

The element of common ownership is present as Five SAC Respondents' sole owner Mark Shoen, together with brothers Joe and James, own 43.1% of AMERCO shares.[27]

The interrelation of operations between the Five SAC Respondents and the rest of the U-Haul system enterprises is best shown in the memo of Gary Horton[28] discussed above at page 14 in section III, B, 5.

[27] See General Counsel's exhibit 450 at p. 25
[28] General Counsel's exhibit 144 p. 44.

The interrelatedness of the U-Haul subsidiaries and the Five SAC companies and Five Sac Holding I, noting particularly the common ownership and management, reflects that there is no real distinction between the Five SAC companies and the rest of the U-Haul system of companies. Such commonality diminishes the argument that the various leases and agreements between Five SAC and UHN, AMERCO and UHI were entered into in any true arms length fashion.

I find there is evidence to establish that the single employer through AMERCO, UHI and UHN and Five SAC and SAC Holding I entered into or operated as a joint venture, as defined by the Board and Courts, to purchase, develop, and operate the Henderson property.

E. Agency Status

UHN has denied that Joe Shoen, Mark Shoen, Dan Fowler, Bob Miner, Henry Fowler, and Ronald Frank were agents of UHN. New Respondents have denied the agency status of Joe Shoen, James Shoen, Mark Shoen, Jeremy Frank, Miner, Fowler, Kelly. In view of the discussion above in section III, I find that each of the named individuals was an agent of the corporate members of the U-Haul System vested with apparent authority to speak and act on their behalf. *SAIA Motor Freight, Inc*., 334 NLRB 979 (2001).

IV. The Alleged Unfair Labor Practices

A. The Facts

1. The UHN Repair Shops

a. The Henderson, Nevada Repair Shop

Henderson is a suburb of Las Vegas, Nevada, located a few miles to the east on the road to Hoover Dam. The Henderson repair shop opened in September 2002 at 989 South Boulder Highway, Henderson, Nevada. It was physically divided into two areas with a total of about 26 bays where various repairs and maintenance was performed.[29] One side of the shop, called the PM side, performed preventative maintenance. As one of U-Haul's 30 "Key City" shops in the United States, Henderson performed preventative maintenance on U-Haul's fleet of one way moving trucks coming into the Las Vegas area. Maintenance is mandated by UHI for the U-Haul fleet at intervals of 5000, 15,000 and 30,000 miles. This maintenance is known throughout the U-Haul system as a PM 5, PM 15 and PM 30. Before Henderson opened as a Key City repair facility, PMs on the U-Haul fleet were performed at Key City shops located outside the state of Nevada. The other side of the Henderson shop was known as the heavy mechanic side. The Henderson shop mechanics performed heavy repairs on the one-way fleet including engine and transmission replacements.

Prior to March 10, 2003, employees on both the PM and heavy mechanic side of the Henderson repair shop worked from 7:00 a.m. to 3:30 p.m. After March 10, the heavy mechanics' hours were changed to 8:00 a.m. to 4:30 p.m. The rationale for the change was that employees were creating a logjam at the three time clock stations since all employees clocked in and out at the same time. By changing the start and end times of the heavy mechanics, Respondents hoped to relieve the congestion at the time clocks.

[29] General Counsel's exhibit 34 is a diagram of the Henderson repair shop.

The Henderson repair shop was run by repair shop manager T. Hill from its opening until about May 8, 2003 when he was terminated. UHI Vice President of Human Resources Kelly was also shop manager in April 2003. Fowler was appointed shop manager by Kelly from about May 8 to May 30, 2003. Jordan was appointed shop manager in June 2003 and served in that capacity until Henderson was closed in December 2003. From September 2002 until May 21, 2003, when he was fired, Scott Hill (S. Hill) was foreman of the heavy mechanic side of the Henderson shop, supervising 10 to12 mechanics performing heavy repairs. From September 2002 until he was appointed shop manager in June 2003, Jordan was foreman of the PM side of the Henderson shop supervising about 30 mechanics divided into five teams of six employees, including a team leader, performing preventative maintenance. After Jordan was appointed shop manager in June 2003 there were no foremen. S. Hill and Jordan reported to T. Hill. Managers T. Hill and Jordan reported to Fowler, Kelly and Miner. At Henderson the shop manager did not report to the UHN president. Fowler appointed William "Bill" Loyd (Loyd) scheduler at Henderson in March 2003. The parts department was managed by John Georgi. The office personnel at Henderson included dispatcher Michelle Jordan, Michael Jordan's wife, and secretaries Vicar Ozaki and Erna Tapat.

When the Henderson shop first opened it had about 30 employees and by early March 2003 there were about 90 employees at Henderson. By May 8, 2003, while the Henderson shop was meeting its quota of servicing 45 trucks on the PM side, it was not yet fully staffed. According to T. Hill, by May 2003 he needed to hire an additional 20 mechanics.

b. The Decatur Repair Shop

Before Henderson was developed and opened as a Key City shop, UHN operated a repair shop at 1900 South Decatur Blvd., Las Vegas, Nevada (Decatur) to repair and maintain its in-town fleet of moving vehicles. T. Hill was shop manager at Decatur until Henderson opened. When Henderson opened Decatur was closed as a truck repair facility, although one or two employees at Decatur continued to repair trailers. From September to October 2002, about 20 to 30 Decatur employees were transferred to Henderson. In January 2003, Fowler decided to reopen the Decatur facility to handle the excess work at Henderson. Fowler hired Alan Bloomberg to manage the Decatur repair shop. In December 2003, after Henderson was closed, the remaining repair and maintenance operation was sent to Decatur. Decatur once again services only UHN in town rental trucks. The one way trucks are once again serviced at Key City shops located outside the state of Nevada.

2. Union Organizing at Henderson

In late 2002 or early 2003 the Union began an organizing campaign at UHN's Henderson and Decatur repair shops that resulted in a representation petition being filed with Region 28 on March 7, 2003 in case 28-RC-6159. The Union sought to represent a unit of UHN's maintenance employees employed at UHN's Henderson and Decatur repair shops.

3. The Appropriate Unit

A representation hearing was conducted on March 19, 2003, and, on April 11, 2003, the Regional Director for Region 28 issued a Decision and Direction of Election[30] and directed that an election be held in the following unit:

[30] Respondent UHN filed a petition for review with the Board regarding the exclusion of senior clerk from the unit found appropriate by the Regional Director. While the petition for review was pending, the Union and UHN agreed to include the senior clerk in the unit.

INCLUDED: All full time and regular part-time brake/tire specialists, detail specialists, engine specialists, mechanic express specialists, PM inspection specialists, pre/post inspection specialists, transmission specialists, van body specialists, mobile repair specialists, parts clerks, transfer drivers, repair dispatch specialists, and schedulers employed by the Employer at and out of its 1900 South Decatur Boulevard, Las Vegas, Nevada, and 989 South Boulder Highway, Henderson, Nevada repair facilities.

EXCLUDED: All other employees, office clerical employees, including the senior clerk, professional employees, guards and supervisors as defined in the Act.

On May 7, 2003 an election was held. Of approximately 77 employees eligible to vote, 47 cast ballots in favor of representation by the Union, 25 cast ballots against representation. There were five challenged ballots, insufficient to affect the outcome of the election. UHN filed objections to the conduct of the election based on alleged Union misconduct. Upon review, the Board held that the Union did not engage in objectionable conduct affecting the outcome of the election and certified the Union as the exclusive, collective-bargaining representative of UHN's unit employees on February 9, 2004, in *U-Haul Co. of Nevada, Inc.,* 341 NLRB No. 26 (2004).[31] Based on the Board's Decision and Certification of Representative, I find that the above described unit is an appropriate unit for the purposes of collective bargaining.

4. The Card Majority

Paragraph 5(b) of the 5th complaint alleges that from on about February 5, 2003 to April 22, 2003, a majority of the employees in the above bargaining unit selected the Union as their collective bargaining representative. As of the payroll period ending February 26, 2003, Respondents employed 90 employees in the certified bargaining unit,[32] including two employees on medical leave. This number includes senior clerk Ozaki who CGC contends is a supervisor within the meaning of Section 2(11) of the Act. Contrary to CGC's assertion, scheduler Loyd was not hired until March 3, 2003. In the course of the hearing CGC offered valid union authorization cards from 55 unit employees, [33] which were received into evidence. CGC contends authorization cards were received from 56 unit employees. However, there is no evidence that an authorization card from Shawn Saunders was received.

Of the 55 valid cards received, 45 were signed before February 26, 2003, three were signed on March 5, 2003 and three were signed on March 20, 2003.

The typewritten language appearing at the top of each sheet of paper that contains eight cards states:

YES WE WANT the IAM

[31] In its Decision and Certification of Representative, the Board used the unit description as set forth in the Hearing Officer's Report issued on July 18, 2003. That unit description excluded the classification of senior clerk although the parties agreed to include the senior clerk in the unit. The Board corrected that error in its later order.

[32] See General Counsel's exhibit 280 (x), (y), (z), (aa) and (bb).

[33] See General Counsel's exhibit 71.

> We believe that only through collective bargaining can we have a voice in our work place, achieve fair treatment for all, establish seniority and better benefits, wages and working conditions. Therefore, this will authorize the International Association of Machinists and Aerospace Workers, AFL-CIO, to represent me in collective bargaining with my employer. This will also authorize said union to use my name for the purpose of organizing **U-Haul Repair Facility**.

Thereafter each sheet of paper contains eight cards with the following information:

> Name (print)_____Date_____
>
> Address (print)_____
>
> City_____State_____Zip_____
>
> Home E-Mail Address_____
>
> Dept._____Shift_____Phone_____
>
> Classification_____Bldg._____Hourly Rate____
>
> **Sign Here X**_____

Each of the 55 employees testified that they signed and dated the cards after they had read the above typewritten statement.

CGC contends that as of February 26, 2003, a majority of the unit employees signed valid authorization cards designating the Union as their collective bargaining representative. However, as of February 26, 2003 there were 90 employees in the unit, including senior clerk Ozaki. I have found only 45 employees signed valid authorization cards as of February 26, 2003. Since a finding of Union majority status is dependent upon Ozaki's exclusion from the unit as a supervisor, I will discuss her employee status now.

a. Vicar Ozaki

Respondents hired Ozaki as clerk at the Decatur facility in September 1997. She was promoted to senior clerk in about September 2000. Ozaki, together with two other clerks, Erna Tapat and Frances Coltey transferred to the Henderson repair shop when it opened in September 2002. Ozaki reported to the shop manager.

Ozaki had access to all personnel records, gave employees new hiring packets, input payroll information into the computer, prepared personnel action forms, maintained personnel forms, maintained call-in sheets and attendance logs and assisted with data input from repair invoices, including the number of work hours mechanics claimed. Ozaki had discretion to reduce the hours of work mechanics claimed. Ozaki alone interviewed Tapat in September 2002 and as a result of Ozaki's recommendation to T. Hill, Tapat was hired. Tapat reports to Ozaki and Ozaki assigns and directs her work.

Section 2(11) of the National Labor Relations Act (Act) defines as supervisor as any individual:

> Having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

The enumerated indicia of supervisory status are read in the disjunctive and any one is sufficient to find an individual is a supervisor. *NLRB v. Chicago Metallic Corp*., 794 F. 2d 527 (9th Cir. 1986).

In *Queen Mary*, 317 NLRB 1303 (1995), the Board reversed the administrative law judge and found that an employee who effectively recommended the hire of employees was a statutory supervisor. The Board pointed out that there was no evidence that the recommending employee's supervisors made independent judgments about the applicants who were hired. Here, significantly, Ozaki alone interviewed Tapat, forcing T. Hill to rely on Ozaki's judgment concerning Tapat's qualifications. There is no evidence that Hill independently made an assessment of Tapat's skills before she was hired. Thus, I find that Ozaki effectively recommended that Tapat be hired and that she is a supervisor within the meaning of Section 2(11) of the Act.

Having found Ozaki is a supervisor and not included in the bargaining unit, I find that as of February 26, 2003, the unit consisted of 89 employees. Accordingly, since 45 bargaining unit employees had designated the Union as their collective-bargaining agent by February 26, 2003, the Union had attained a majority at that time.

In addition CGC contends that Henderson scheduler Loyd is a supervisor and agent of Respondents.

b. William "Bill" Loyd

Respondents initially hired Loyd as a brake/tire specialist on March 3, 2003. Two weeks later Fowler appointed Loyd scheduler. One of Loyd's duties as scheduler was to assign repairs, select the best mechanic to perform the work and move employees to equipment. In this regard Loyd alone was responsible for scheduling and assigning all work to mechanics. Without supervision, Loyd determined when, where and to whom trucks were assigned for repairs and maintenance. Loyd also reviewed the work of mechanics to assure its accuracy.

An individual who possesses authority to monitor the work of employees, uses his independent judgment to assign work, assesses employees' skill levels and instructs employees to correct errors is engaged in the responsible direction of work and possesses supervisory authority. *Action Auto Stores*, 298 NLRB 875, 891 (1990).

c. The team leaders

For the first time, in their post-hearing brief, New Respondents and Respondent UHN assert that team leaders are supervisors within the meaning of Section 2(11) of the Act.

By March 2003, the Henderson facility had 30 mechanics divided into five teams of six employees, including a team leader, performing preventative maintenance. Some of the team leaders worked with the tools and others did not. The team leaders had no authority to grant time off, or to excuse an absence. They had no authority to hire, fire, and discipline or

effectively recommend such actions. While they assigned work to members of the team, the assignment was of a routine nature that involved no discretion or use of independent judgment. While Respondents may have referred to the team leaders as supervisors, their job duties were in the nature of leadmen. I find the team leaders are not supervisors within the meaning of the Act. *Sears, Roebuck and Company,* 292 NLRB 753 (1989).

5. Respondents Become Aware of their Employees' Union Activities

On Friday, February 28, 2003, Henderson repair shop manager T. Hill learned of the Union organizing at the Henderson shop when mechanic Dave Hohman told Hill that there was union activity. When T. Hill questioned mechanics Larry Fuller (Fuller), Bill Farran (Farran), Don Collette (Collette) and Joel King (King) to determine if there was union activity, the employees denied that they had participated in any Union actions. Late in the day on February 28, T. Hill told supervisors Jordan and S. Hill to find out what was going on with the Union. At the end of the day both Jordan and S. Hill reported back that there was union activity going on at the Henderson repair shop. T. Hill told them that if a union comes in "U-Haul will close the shop." T. Hill also called UHN President Lanza and told him of the Union. Lanza said that there would be trouble coming because it was well known how U-Haul reacted towards unions.

At the end of February 2003, toward the end of the workday in the Henderson repair shop, Jordan grabbed Henderson mechanic Mark Nance (Nance) by the arm, told him to "get the hell outside" and said "I want to know what the hell you know about the Union." Jordan added, "We got this new facility and if it was true that we really had a union trying to come in the doors, U-Haul would shut the doors of that new facility . . . there's no way that those doors will remain open, and we had to do something to stop this union." Nance denied knowing anything about the Union. For the next four or five days Nance had regular conversations with Jordan, T. Hill, and S. Hill. T. Hill asked Nance who was starting the Union and who was supporting the Union. Nance denied any knowledge.

On Monday, March 3, 2003, T. Hill called the UHI Human Resources Department in Phoenix and said it was possible that there was a union at the Henderson shop. T. Hill was told that UHI Vice President for Human Resources Kelly would contact him. Later on March 3, Kelly called T. Hill and said he was in Las Vegas. Kelly said, "I'll be there and take care of the union problem." Kelly told T. Hill to cease all hiring[34] "because he didn't want to hire in any more Union."[35] After T. Hill spoke with Kelly, he called Fowler and advised there might be a union problem at Henderson. Fowler told T. Hill that Kelly knew how to handle union campaigns.

On March 3, 2003, T. Hill called about 10 heavy repair mechanics to a meeting in the Henderson break room with Jordan and S. Hill. T. Hill told the employees that he understood they were trying to get a union in and if the Union came in, U-Haul would close the facility and fire everybody. T. Hill said he did not want employees talking about the Union or handing out

[34] At the time Kelly imposed the hiring freeze, T. Hill estimated he needed an additional 20 employees.

[35] Kelly denied imposing a hiring freeze. However, Kelly admitted that on March 5, 2003 he told T. Hill to remove a sign indicating the Henderson facility was hiring. Kelly admitted that he told T. Hill not to hire until Kelly had evaluated Hill's managerial ability. Kelly admitted that the no hiring requirement was still in effect as of January 13, 2004, despite the fact that Hill was fired in May 2003 and Kelly admitted that the decision not to hire was his alone. Whatever term is applied, Respondents decided not to hire any employees as of March 5, 2003 until at least January 13, 2004 in both Henderson and Decatur.

union flyers on company property or they would be fired. T. Hill also said any employee who was discovered attempting to start a Union would be fired on the spot.[36]

The next day Kelly came to the Henderson shop and discussed the union activity with T. Hill. Kelly told T. Hill to run the Henderson shop and report to Kelly. Kelly told T. Hill that he was going to go around the shop and find out about employee problems and collect information about the Union. Later, Kelly told T. Hill that they had a union problem. Kelly told T. Hill that he believed Hill may have hired someone that was part of the Union.

On March 4, 2003 at the Henderson repair shop Jordan told Collette that his sources said Collette, Garcia, Fuller and Farran are the union leaders. Jordan went on to say that his sources said that employees were eight votes short of a majority.

On March 5, 2003 T. Hill met Fowler and Kelly at the Henderson shop. Fowler told T. Hill to run the Henderson shop and report to Kelly. T. Hill, Fowler and Kelly all agreed that Farran, King and Collette were part of the Union.

Also on March 5, Jordan met with mechanics Jesus Jacobo (Jacobo) and Abel Carreno (Carreno). Jordan told them he had bad experiences with unions. He said they could do what they wanted but that the Union was not the way to go. Jordan added that there were people playing games in the shop and that "we're going to have to get rid of those people."[37]

On March 7, 2003. T. Hill, Fowler and Kelly went to the Decatur shop and had a conference call with Mark Shoen and Ronald Frank, UHI executive vice president. Mark Shoen said he was upset about union activity in his shop. He wanted to know how it could have happened. Mark Shoen asked T. Hill, "Why didn't you know about it." Mark Shoen then said, "I want to fire some people." Mark Shoen told Fowler to, "Get people off the payroll today." Kelly disagreed. He said, "I don't think that's the right course of action. It could lead to unfair labor practice charges." Ronald Frank said, "Let the attorneys sort it out later." Mark Shoen told Kelly he understood Kelly's position then said, "Terminate people. Get them off the payroll today. I want to set an example to other employees." Mark Shoen then asked T. Hill, "Why didn't you know union activity was going on before you called Kelly." T. Hill said he did not know anything. Mark Shoen said, "You should have known." T. Hill said the rental center manager at Henderson knew of the union activity and never said anything. Ronald Frank said, "It had nothing to do with marketing. This is all repair side issue." Mark Shoen then said, "Terminate up to ten people today. Send a message to the employees that union activity won't be tolerated."[38]

---

[36] T. Hill admitted that he told employees that the purpose of the meeting was to learn more about employees' union activities and that U-Haul had closed other shops due to employee union activities.

[37] Jordan denied many of the 8(a)(1) statements attributed to him. I found Jordan to be lacking in credibility. I found him to be evasive, non-responsive and inconsistent in his testimony. His testimony was characterized by confusion and lack of specificity when questioned by CGC. Where there is a conflict between his testimony and that of another witness, I will not credit Jordan.

[38] Respondents did not call Mark Shoen, Ronald Frank or Fowler to deny such statements were made. Kelly claimed he was not present during most of the conference call. Mark Shoen testified that it was T. Hill who wanted to fire 10 employees. I found Mark Shoen totally lacking in credibility. His testimony was evasive and lacked specificity. For a top management official of UHI and sole owner of the Five SAC companies, he unbelievably testified he knew little of the operations of those companies. While T. Hill filed a lawsuit against Respondents for his termination, I find his testimony was given in an honest and straightforward manner. His demeanor was not hostile toward Respondents and his answers were fully responsive to both CGC and Respondents' counsel. His testimony was specific and detailed. I credit T. Hill's testimony generally and specifically his version of this conference call.

After the conference call, Fowler told T. Hill, "Terminate some employees. Get their checks ready." T. Hill said, "Who?" Fowler said, "You know who is involved. Get their checks ready and get them off the payroll." T. Hill decided to fire mechanics Jacobo, Salvador Campos (Campos), Jorge Garcia (Garcia), Johnny DeGuzman (DeGuzman) and Carreno based solely on the fact that he believed they were promoting the Union. T. Hill wrote their names down and showed the list to Fowler. Fowler said, "Fine, let's go get the checks and get this started." On the return drive to the Henderson shop, T. Hill asked Fowler how he should handle the firings. Fowler replied, "Walk in and fire the people on the list."

6. The March 7, 2003 Terminations

a. The Termination of Jorge Garcia

Garcia was employed by Respondents on March 11, 1998 at the Decatur facility as a heavy mechanic. He went to Henderson when that repair facility opened as a mechanic and later was assigned to a PM team. When Decatur reopened, Garcia returned in mid-February 2003. He signed a union authorization card before his termination.

After directing UHN secretary Holly Robinson to issue final checks for the five employees selected for termination, T. Hill entered the Decatur repair shop and, with Decatur shop manager Bloomberg, began examining a truck Garcia had been working on in order to find a reason to justify Garcia's termination. Garcia had not completed work on the truck which required a new battery cable that Garcia ordered but had not yet installed. T. Hill found that the paperwork on the truck reflected that Garcia had replaced the battery cable and T. Hill admitted seizing on this as a pretext for terminating Garcia.

b. The Terminations of Salvador Campos, Johnny DeGuzman, and Jesus Jacobo.

Respondents hired Campos as a mechanic at the Decatur facility on January 9, 2002. He transferred to Henderson when it opened in the fall of 2002 where he worked initially on the PM side then on the heavy mechanics' side of the repair facility. Campos attended union meetings, spoke to unit employees about the Union and signed an authorization card. Campos was never disciplined and was told by T. Hill and Jordan that he was doing a good job.

DeGuzman went to work for Respondents on March 25, 1998 at the Decatur repair shop performing PM service. DeGuzman went to Henderson in September 2002 as a mechanical express specialist. He later went to work on the heavy mechanics side of the Henderson shop. DeGuzman signed a union authorization card.

Jacobo was hired as an engine rebuilder by Respondents on September 28, 1998, at Decatur. He later worked as a heavy mechanic and was frequently praised for the quality of his work by T. Hill and Jordan. Jacobo transferred to Henderson when that shop opened and worked on a PM team. Jacobo received a merit pay raise on March 7, 2003. He signed a union authorization card.

After firing Garcia at the Decatur repair shop, later on March 7, 2003, T. Hill, Fowler and Kelly returned to the Henderson repair facility in T. Hill's van. During the return trip Fowler told T. Hill to walk in and terminate people. T. Hill entered the facility and along with Jordan discharged Campos, DeGuzman and Jacobo. When the employees asked why they were being terminated T. Hill told them he did not have to give them a reason. Jordan asked why the

employees were going to be terminated and T. Hill replied, "You know why." Only Carreno was not terminated because he was absent from work.

Later in the afternoon of March 7, T. Hill told Kelly and Fowler that he had fired employees as requested. Kelly then called Mark Shoen to advise him that the terminations had been accomplished. Shortly thereafter, T. Hill received a faxed copy of the petition in case 28-RC-6159. After T. Hill showed the petition to Kelly, Kelly said the terminations were wrong and would cause trouble with the Board. Kelly told T. Hill not to fire any more employees.

After the petition was filed, Kelly took over running UHN's campaign against the Union. He conducted all meetings with employees and explained U-Haul's position. No one from UHN conducted any part of the employer's election campaign, including UHN president Lanza. A day or two after the petition was filed, Fowler told T. Hill to take orders from Kelly and to keep running the shop as normal as possible. Fowler said that he and T. Hill would answer to Kelly. At about this time T. Hill and Fowler told Kelly they needed to hire more employees for the Henderson shop. Kelly said, "You can hire employees if they are loyal to U-Haul to change the percent of the vote to U-Haul. Find personal friends and family loyal to you."

7. Employees' Ongoing Union Activity

Respondents' employees continued their union activities through April, May and June 2003 and circulated petitions for employee signatures including a petition urging employees to vote yes in the upcoming Board conducted election, a petition protesting the discharges of J. Garcia, Campos, DeGuzman and Jacobo, a petition complaining of the presence of Kelly and Fowler as well as Respondents' objections to the election, and petitions demanding Fowler and Jordan's removal as shop foremen.

a. The Voting Yes Petition

Just before the May 7, 2003 Board election, employees signed a petition entitled *We Are Voting Yes.* The petition stated that the Union was authorized to represent them for purposes of collective bargaining with UHN and that they were committed to voting yes. The petition contained the printed name of each employee followed by their signature.[39] This petition was the subject of UHN's objections to the May 7 election.

b. The March 7 Discharges Petition[40]

Employees signed a petition demanding that UHN reinstate the employees discharged on March 7, 2003. About 30 employees presented this petition to Fowler in mid-May around noon outside a service bay at Henderson. Farran gave the petition to Fowler and told him it was a petition for reinstatement of the fired employees.

c. The May 21 Petition[41]

Employees signed a petition complaining of Kelly and Fowler's presence at the Henderson facility and to UHN's objections to the election. The petition was presented to Fowler during lunch on May 21, 2003.

[39] General Counsel's exhibit 44.
[40] General Counsel's exhibit 146
[41] General Counsel's exhibit 29(a)-(b).

d. Remove Fowler Petition[42]

Employees Omar Armas (Armas), Farran, Joel King (King) and Frank Watkins (Watkins) presented a petition signed by employees to Fowler, demanding Fowler's removal as acting Henderson shop manager on May 30, 2003. On May 30, 2003, Fowler issued identical warnings[43] to Armas, Farran, King and Watkins stating that they were away from their work areas and were insubordinate when directed to return to work. Each employee testified they presented the petition on their lunch break and that they were not ordered back to work by Fowler.[44]

e. Remove Jordan Petition[45]

After Jordan became Henderson shop manager in early June 2003, Armas gave Jordan a petition signed by employees calling for Jordan's removal and for the reinstatement of S. Hill as shop foreman. Sometime later, an identical petition with employees names typed to the left and right of their signatures was found posted throughout the Henderson repair shop.[46]

f. Joe Shoen Petition[47]

The Henderson repair shop employees signed another petition directed to Joe Shoen. The petition called on Joe Shoen to honor the election results and negotiate a contract with the employees. The petition was faxed to Joe Shoen which he forwarded to Kelly.

8. April 22, 2003 Discharge of Mark Nance

Nance began working for Respondents in about June 2001. He transferred to the Henderson repair shop when it opened and worked as a heavy mechanic. Two weeks after his transfer, Nance was promoted by T. Hill to team leader in the preventative maintenance side of the Henderson repair shop.

On February 25, 2003, Nance signed an authorization card. At the end of February 2003, toward the end of the work day, Jordan grabbed Nance by the arm told him to "get the hell outside" and said "I want to know what the hell you know about the Union." Jordan added, "We got this new facility and if it was true that we really had a union trying to come in the doors, that U-Haul would shut the doors of that new facility. That there's no way that those doors will remain open, and we had to do something to stop this union." Nance denied knowing anything about the Union. For the next four or five days Nance had regular conversations with Jordan, T. Hill, and S. Hill. T. Hill asked Nance who was starting the Union and who was supporting the Union. Nance denied any knowledge.

Nance had experienced problems with kidney stones for many years and was unable to work as a result of this ailment during the first week of March 2003. Nance gave Jordan notice of his inability to work before his absence from work. No written leave of absence forms were required. Jordan, who knew the nature of Nance's medical problem, accepted the doctor's release Nance gave him when he returned to work on March 10, 2003. In April 2003 Nance

[42] General Counsel's exhibit 29(c)-(e).
[43] General Counsel's exhibit 31.
[44] I credit the consistent testimony of the four employees over Fowler's testimony.
[45] General Counsel's exhibit 45.
[46] General Counsel's exhibit 46.
[47] General Counsel's exhibit 147.

again experienced kidney stone problems and gave Jordan written confirmation from his doctor outlining a series of surgeries Nance had to undergo.[48] Jordan asked Nance to sign FMLA (Family Medical Leave Act) paperwork for a 30-day period and told Nance that T. Hill or a secretary would complete the paperwork.

Jordan did not require Nance to fill out leave of absence forms and Nance's medical leave commenced on April 12. While Nance was on leave, Jordan visited Nance regularly at the house Nance rented from Jordan. Jordan inquired about the state of Nance's health and on one visit asked Nance how he felt about the Union. When Nance said he wanted better wages, Jordan responded that U-Haul had "plans of shutting the doors down" and they could do it legally. Jordan also said that Farran and Collette were union leaders.

Nance did not learn that he had been discharged until about April 27, 2003. On that date, while at a pharmacy to pick up a prescription, the pharmacist told Nance he no longer had insurance to cover the cost of medications. The pharmacist said he had called UHI Human Resources in Phoenix and was told Nance had been fired on April 22, 2003. Nance immediately called Jordan. Jordan said Nance was still employed. Nance then called Sam Brown at UHI Human Resources who told Nance he had been fired for abandoning his job after being a no-call, no-show for several days. Later Jordan said he would call UHI to correct the mistake but in fact Jordan had told UHI that Nance was a no-call, no-show.

9. Work Rules Changes

On May 7, 2003, the Union received a majority of the valid votes cast in the Board conducted election. On May 8, 2003 Jordan held a meeting with five other employees in Henderson mechanic Alfred Magana's bay. Jordan said there would be a lot of changes since employees voted the Union in. Jordan said for absences and lateness employees would have to call in, and they "couldn't no-show like they used to do." Jordan said the employees could not go to other bays for tools, they could not talk to employees in other bays or go to the bathroom without permission from the team leaders. Jordan said the rules were always there, just never enforced.

[48] Respondents contend that Respondents' exhibits 137 and 138 establish that Nance did not need medical leave but rather abandoned his job. The medical records contained in Respondents' exhibits 137 and 138 are emergency room visits by Nance to two Las Vegas hospitals between November 2001 and November 30, 2003. They reflect only that Nance presented complaining of right flank pain but lab and radiological tests were negative. The absence of a definitive diagnosis of kidney stones in these records does not establish Nance did not suffer from kidney stones only that such a diagnosis could not be made at the time of his emergency room visits. General Counsel's exhibit 516 is a note from Nance's treating physician, a physician in a better position to evaluate Nance's medical condition than emergency room physicians who saw Nance on one occasion. Nance's treating physician diagnosed Nance with kidney stones and said he was under treatment from April 21 to April 29, 2003. Moreover, the absence of treatment records in April 2003 establishes only that Nance was not treated at the hospitals that produced the records in Respondents' exhibits 137 and 138 in April 2003. Contrary to my previous credibility findings regarding Jordan, I found Nance to be a straightforward and credible witness who gave specific answers without any hostility or evasion. He had a believable demeanor and a specific recollection of events. I credit Nance's testimony.

a. May 20, 2003 Change in Call in Procedures

On about May 20, 2003, Fowler, without notice to or bargaining with the Union, posted a memo[49] to all employees of the Henderson and Decatur repair shops. The memo states in pertinent part:

> Additional note:
>
> It is important that everyone needs to be at work each work day and on time to do the work that needs to be done. Anyone that will be late and or cannot come into work for any reason must call me personally at the Henderson Shop No. (702) 568-5141 or my Cell No. (602) 300-3387.
>
> Thank you and have a good weekend.
>
> Signed by Dan Fowler.

On about June 26, 2003, Jordan issued a similar memo without notice to or bargaining with the Union.[50] Jordan's memo stated:

> For this shop to operate effectively and serve the customer it is critical that all employees report to work as scheduled. Employees are to be at their work-station ready to begin work at their shift starting time. Employees who are not able to report as scheduled or will be absent must call me personally at the Henderson Shop in advance of their shift starting time. The shop number is (702) 568-5141 or my cell phone (702) 429-9889.
>
> Employees who do not follow these instructions will be subject to discipline. If you have any questions regarding this matter please feel free to discuss them with me.
>
> Michael Jordan, Manager.

Before May 20, 2003 employees called the office staff to report that they would be late or absent from work and were not required to call a supervisor.

b. sick leave

Before May 7, 2003 employees were not required to fill out a form if they claimed sick or other leave. After May 7, employees were required to sign sick leave requests before or after they took sick leave.

10. The May 2003 Terminations

a. The Discharge of T. Hill

On about April 22, 2003, T. Hill met with Kelly in the lunch room at the Henderson shop. Kelly told T. Hill to write up reasons why he fired the four mechanics on March 7, 2003 so there would be no unfair labor practices. T. Hill then began to write a memo justifying Garcia's

[49] Respondent's exhibit 6.
[50] Respondent's exhibit 7.

termination but changed his mind and told Kelly, "I won't lie for you or U-Haul." Kelly said, "Write them up about productivity or work performance." T. Hill replied, "That's not why they were fired." Now angry, Kelly said, "I know that. We need the information written up on these employees." The meeting ended with T. Hill stating that he would not lie.[51]

About a week later, T. Hill was called into a meeting at the marketing company offices at the Decatur facility. Fowler and Kelly were present. Kelly told T. Hill, "You're being removed as shop manager." When T. Hill asked why, Kelly responded, "The shop managers are not in proper uniform. They need to be in white not tan." Hill said Fowler told him to use the tan uniforms and Kelly said, "You should not have listened to Fowler." Kelly added, "You'll have a job in the marketing company."

On about May 2, 2003, T. Hill spoke with Lanza about a new position with the marketing company. Lanza said he had been instructed by Kelly to wait until May 8, 2003, the day after the election. Later, on May 8 when T. Hill called Lanza about a job at the marketing company, Lanza deferred to Fowler. When T. Hill called Fowler, Fowler told T. Hill he was no longer employed by U-Haul and explained T. Hill was fired for the reason Kelly gave and said, "I have to do what I have to do. What do you want me to tell you." A few days later, T. Hill called Mark Shoen and explained he had been fired. Mark Shoen said, "I know that." When T. Hill said that was not fair, Mark Shoen said, "You didn't fire the people for cause." T. Hill replied, "There was no cause. They were fired for union activity." Mark Shoen replied, "I know. You didn't fire them for cause."

After T. Hill was removed as shop manager in April, Kelly took over T. Hill's duties as shop manager until about May 9, 2003. In early May 2003, Kelly appointed Fowler as the shop manager at Henderson. Fowler served as Henderson shop manager from May 9 to the end of May 2003,.

b. May 19, 2003 Aubry Church Discharge

Church was employed by Respondents at the Henderson repair facility as a van body specialist on December 2, 2002. Church signed an authorization card and the Vote Yes Petition in early May 2003.

On about May 15, 2003, Church spoke with Jordan and said he needed a few days off for personal reasons. Jordan told Church to do what he needed to do and take care of what you need to do. Jordan did not tell Church to call in every day or to fill out any paperwork for the time off. When Church returned to work about four days later, Fowler told Church he had been marked down for job abandonment. Church turned in his uniforms and left.

c. May 21, 2003 Glenn Ellazar Discharge

Glen Ellazar (Ellazar) was hired by Respondents in February 1999 at the Decatur facility as a van body specialist. In September or October, Ellazar transferred to the Henderson facility at a heavy mechanic. Ellazar also trained employees at Henderson in van body work. In late 2000, Respondents paid for Ellazar's continuing mechanic's education through the JET program.

[51] Hill's testimony is corroborated by his contemporary notes received as Respondents' exhibit 43(b). I credit Hill's version of this conversation.

On February 5, 2003, Ellazar signed a union authorization card and in May 2003 signed the Vote Yes Petition and the May 21 Petition. On March 3, 2003, Ellazar attended an employee meeting with T. Hill. T. Hill said that he had "gotten wind of what's going on in the shop; the employees were trying to start a union." T. Hill further stated if he found out who was trying to start the Union they would be fired on the spot. T. Hill went on to say that if employees organized, the company will close down.

On Thursday, May 22, 2003, Ellazar called the Henderson shop and spoke to Fowler. Ellazar said he would not be able to work that day and perhaps the next day as well. Fowler asked if Ellazar would be in the following week and Ellazar said he would. Fowler replied, "Fine, I'll see you then." When Ellazar returned to work on Tuesday, May 27, 2003, after the Memorial Day Holiday, Fowler told him he had been fired for job abandonment. When Ellazar explained to Fowler that he had been at the courthouse working on a divorce, Fowler refused to review the divorce documents Ellazar had with him.

On about May 29, 2003 Ellazar wrote to Fowler concerning his termination and Fowler replied in a letter dated June 11, 2003, that states in part:

> Your employment was terminated on May 27 as a result of 2 days of "no call/no show," which is considered job abandonment and an automatic ground for termination under Company policy. Whatever your reason for being unable to call the previous Friday, you did not do so, and this triggered the Company's policy, resulting in your termination.
>
> The Company's policy takes into account the number of times an employee is a "no call/no show. We do not terminate an employee for job abandonment on the first occasion. Your situation was not comparable to that.

General Counsel's exhibit 99 shows Ellazar was a no call-no show only one time on May 23, 2003 and the call in sheet for May 23, 2003[52] shows Ellazar called into the shop notifying Fowler he would be absent. Further, Respondents' time card[53] shows than on May 22 and 23, 2003 Ellazar was on paid vacation time.

d. May 21, 2003 Termination of Scott Hill

Scott Hill (S. Hill) had been employed by Respondents since June 16, 1984. He held a variety of positions including mechanic, parts manager, MRU driver and shop foreman. S. Hill was promoted to heavy mechanic shop foreman when Henderson opened in September 2002.

On about May 19, 2003, S. Hill had a conversation with Fowler after work. Fowler told S. Hill that Fowler believed Farran and other mechanics were running S. Hill's side of the shop and S. Hill had to be firmer with the mechanics. When Hill replied that the mechanics were working with good efficiency and asked how Fowler wanted him to be firmer, Fowler gave no reply.

On May 21, 2003 Fowler told S. Hill he had to discharge him for failing to follow programs and procedures. Fowler did not elaborate on what programs and procedures S. Hill failed to follow. Fowler said he consulted with Kelly before firing S. Hill. Fowler told Kelly that S. Hill was working for the staff rather than for Fowler. S. Hill got parts for mechanics, swept and mopped their floors, cleaned the bathrooms and emptied mechanics' garbage cans. Fowler

[52] General Counsel's exhibit 103.
[53] General Counsel's exhibit 98(j).

said S. Hill "appeared not to be on my team." When asked by CGC about employee petitions, Fowler replied, "Scott knew what was going on, on his side of the building and failed to tell me what was going on, . . ." The discharge form for S. Hill reflects he was fired because he did not act in the best interest of the organization by not communicating with management which was a key part of his job as foreman.[54]

Shortly, after being terminated S. Hill spoke with Jordan. Hill told Jordan he was being terminated for helping employees clean up. Jordan said Fowler had also caught Jordan cleaning up in the PM area. Jordan was never disciplined.

e. Alfred Magana

Alfred Magana (Magana) was hired by Respondent on January 6, 2003 at Henderson as a tire and lube tech. Magana signed a union authorization card on February 4, 2003 and the Vote Yes and Remove Fowler petitions. Magana, while wearing a hat with union insignia, attended a barbeque Respondents sponsored about two weeks before the May 7, 2003 election. During the barbeque, Jordan asked Magana how he was going to vote and Magana said for the Union. At a meeting after the barbeque Magana told Kelly that Respondents' 401(k) plan was not that great. Kelly told Magana he did not know what he was talking about and must be on drugs.

During his employment, Magana was frequently absent and late for work due to his son's serious medical condition. T. Hill and Jordan were both aware that Magana was absent and late without calling into work. Until the end of April 2003, Magana had never been warned or disciplined for his attendance. In early May 2003, T. Hill and Jordan met with Magana and T. Hill warned Magana that he might have to be put on part-time status because of his attendance. T. Hill told Magana he had to be present every day. Magana was not put on part-time status and was not disciplined.

On May 8, 2003 Jordan held a meeting with five other employees in Magana's bay. Jordan said there would be a lot of changes since employees voted the Union in. Jordan stated for absentees and lateness employees would have to call in, and they could not no-show like they used to do. Jordan told the employees that they could not go to other bays for tools, they could not talk to employees in other bays or go to the bathroom with permission from the team leaders. Jordan stated the rules were always there, just never enforced.

At the end of May 2003, Magana received a summons concerning a domestic issue.[55] At this time Magana told Jordan about the problem and said he needed to take some time off work. Jordan told Magana he could take days off to take care of the problem. Jordan said he would give Magana a leave of absence form. Jordan failed to do so. Magana also asked Fowler for the leave slip and Fowler failed to provide it.

On May 29, 2003, Magana came late to work and was told to report to Fowler. Fowler said that Magana was absent a lot. Magana showed Fowler his court papers dealing with the domestic issue and said he had gotten permission from Jordan to take a half day or day off. Fowler said Magana had to come to work or be fired. Fowler gave Magana leave of absence forms to fill out and to come back the next day. Fowler said he would see what he could do about the time off and told Magana to go home, to take the rest of the day off.

[54] General Counsel's exhibit 201.

[55] Magana testified that these conversations occurred on May 14 and 15, 2003. It is clear from the time records that the conversations with Jordan and Fowler took place on May 28-30, 2003.

On May 30, 2003, Magana again reported to work late.[56] Fowler asked Magana why he was late and Magana said, " I explained it to you yesterday." Fowler told Magana to put it in a call sheet. A short time later Magana was told to go speak with Fowler. Fowler said that Magana was a good worker but that he had to let him go. Magana was fired for excessive absenteeism and tardiness.

f. Scott Marks

Scott Marks (Marks) began his employment with Respondents in October 2000 at the Decatur repair shop as a heavy mechanic. In 2001 he became an MRU (an employee who drove a repair truck and was dispatched to service U-Haul trucks at remote locations) attached to the Henderson repair shop after it opened. Marks signed a union authorization card as well as the "Vote Yes Petition", the March 7 Discharge Petition and the May 21 Petition. Until May 7, 2003 Marks wore an eyeglass chord and button with union insignia. On May 7, 2003, at the parts counter Jordan directed Marks to remove the chord and button while on company property on company time. Jordan told Marks that the shop would never be a union company. A week later, Jordan told Marks that the Union was going to close the shop and everyone would lose their jobs.

About May 20, 2003, Marks pulled his MRU vehicle in front of the Henderson office. Fowler came up to Marks and asked why the truck was leaning to one side. Marks explained that the suspension caused the truck to lean right. Fowler said the truck needed repair and told Marks to go to work on the PM side. Marks asked if he could switch with another MRU driver because he needed the overtime but Fowler refused saying the Union was not allowing any changes and that he would have to see what could be done with the Union to resolve the situation.

A few days later in Marks' bay Loyd asked Marks where he stood on the Union. Marks said that Loyd and everyone else knew where he stood. Loyd replied a "union representative came to visit me and I told him to get off my property or I'll shoot him." On May 27 or 28, 2003, Loyd again asked Marks if he was still a die hard union supporter. Marks said, "I'm just trying to make ends meet. I've got two kids to support."

At the end of the workday on May 30, 2003, Jordan approached Marks and said Fowler doesn't want you here anymore. When Marks asked why, Jordan replied that he did not know. Marks said that's bullshit and Jordan agreed. Marks asked why Fowler did not personally terminate him. Jordan said, "He's gone, you have to go."

After his discharge, Marks went to the Henderson facility on Saturday, May 31, 2003, to retrieve his tools and got into a confrontation with Dexter Smith.

g. Nelson Sandoval

Respondents hired Nelson Sandoval (Sandoval) on March 3, 2003 at Henderson as a lube technician. Sandoval signed a union authorization card and four employee petitions presented to Respondents. In April 2003, Jordan told Sandoval that he did a good job and was getting 100% on his work. Sandoval does not appear on the efficiency ratings, apparently

[56] Magana claims he called work on both May 29 and 30 to report he would be late.

because he had been terminated and out of the system by the time those reports were generated on September 3, 2003.[57]

On May 30, 2003, Jordan told Sandoval that he had received a call from the "labor board". Jordan said that Sandoval had not completed his 90 days so they had to let him go.

Jordan and Fowler said they met near the end of Sandoval's probationary period and reviewed his performance, including attendance, ability to work with others, and efficiency. After reviewing these factors, they decided not to retain Sandoval for failing to meet the minimum job requirements.

h. Jon Jacks

Jon Jacks (Jacks) was employed by Respondents at Henderson on September 27, 2002 as a van body specialist. When Jacks was initially interviewed by Jordan, he told Jordan he had to take classes on Tuesday and Thursday for a possession of marijuana conviction and had to leave work one half hour early. Jordan gave Jacks permission to leave work early to attend the classes. Jacks signed a union authorization card and four of the employee petitions discussed above. Jacks admitted that he was absent from work sometimes but that he was never disciplined.

On May 29, 2003, Fowler told Jacks that his driver's license had expired and that he should take care of renewing his license. Jacks asked Fowler if he could take care of it at lunch. Fowler said talk to Jordan. On May 30, 2003, Jacks spoke to Jordan before lunch and said he had to get his driver's license. Jordan asked when Jacks wanted to go and Jacks replied after lunch and then to class. Jordan said make sure you bring the license on Monday.

On the following Monday and Tuesday, Jacks called work to report he was sick and would be absent. On Wednesday June 4, 2003 Jacks reported to work. Jordan approached Jacks and said ''I have to let you go because of what happened on Friday. You took off without telling anyone. This isn't my decision, you have to call Fowler."

i. The May 2003 Termination of Heath Williams

Heath Williams (Williams) was employed by Respondents at the Henderson facility as a brake specialist in January 2003. Williams signed a union authorization card as well as two of the employee petitions. Williams testified that in July or August 2003[58], he spoke to Fowler and Jordan at the beginning of the work day and explained that he was being evicted from his house that day and that he needed a pay advance to pay off the landlord and some time off in the afternoon to move his family. Fowler told Williams he did not give pay advances and to let Jordan know how long Williams could work. Jordan told Williams to come talk to him when Williams had to leave. At about 3:00 p.m. Williams asked Jordan if it was alright to leave and Jordan said, "Go."

[57] General Counsel's exhibit 129.

[58] This conversation could not have occurred in July or August 2003 since it has been well established that Fowler left Henderson due to a back injury at the end of May 2003. Moreover, the payroll records for the period ending June 25, 2003 no longer show Williams as an employee. (General Counsel's exhibit 280qq-tt) The last payroll records reflecting that Williams was employed is for the period ending May 28, 2003. (General Counsel's exhibit 280mm-pp)

When Williams returned the following day he was discharged by Fowler in Jordan's presence for leaving work without permission.

During the course of this hearing, on about July 12, 2004, two private investigators, James Perry and a Mr. Drewry[59], came to Williams' house. Perry introduced himself to Williams as a former FBI agent and said that they wanted to ask Williams questions about the U-Haul incident.

Williams allowed Perry and Drewry to enter and Drewry questioned Williams about his employment at U-Haul. Drewry asked Williams if he worked for U-Haul, how long he had been employed, what happened with his termination, if there was something he did not like about U-Haul, if this was why he quit, and if the Union talked Williams into sabotaging the company. Williams said he did not quit and terminated the conversation. According to Williams, at no time did Perry or Drewry tell Williams the purpose of their visit, who they represented, that the interrogation was voluntary, that he could stop the interrogation any time and that he did not have to talk to them.

According to Perry, he questioned Williams about his employment with U-Haul but told Williams that the interrogation was voluntary and Williams did not have to talk to them. Perry claims that Drewry conducted most of the interview.[60]

I find that Williams testimony was given in a straightforward manner that appeared without embellishment or histrionics. On the other hand Perry initially said that Drewry conducted the interview with Williams. Only when Perry was precluded from giving hearsay testimony as to what Drewry said during the interview, did Perry testify that he conducted the interview and gave details about what he said to Williams, including that he told Williams the interview was voluntary. I credit Williams' testimony.

11. The May 22, 2003 No Solicitation-No Distribution Rule

Hernan Fontes (Fontes) was employed at the Decatur repair shop as a mechanic. On May 22, 2003, he approached shop supervisor Allan Bloomberg (Bloomberg) and asked Bloomberg if he wanted to sign a petition for the reinstatement of five employees. Bloomberg looked at the petition and said, "This is bullshit. What are you doing? This is not right. If you do this at U-Haul, I'll fire you. If I hear about this petition, I'll fire you." About 25 minutes later Bloomberg told Fontes, "I made a mistake. I apologize." Bloomberg told Fontes he could circulate the petition off company property.

12. The Early June 2003 Termination of Cody Stewart

Cody Stewart (Stewart) was employed by Respondents at the Henderson repair facility on February 5, 2003 as a wash bay employee. On February 12, 2003, Stewart signed a union authorization card as well as the "Vote Yes" petition. On February 18, 2003, Stewart was involved in an auto accident on the way home from work. On February 19, Stewart returned to work but at the end of the day complained to T. Hill of back pain. T. Hill suggested that Stewart take medical leave and return when he felt better. Stewart did not have to fill out a leave of

[59] Drewry's firm, Manuel, Daniels, Burke International, LLC, private investigators, was hired by the New Respondents' law firm, Akin, Gump. The Manuel firm hired Perry, a Las Vegas private investigator, who had a Nevada private investigator's license to assist. Respondents stipulated that both private investigators were agents of Respondents.

[60] Drewry was not called by Respondents as a witness.

absence form. Stewart returned to work on February 24, 2003, but at the end of the day Stewart went back on medical leave. Stewart kept both T. Hill and dispatcher Michelle Jordan advised of his medical condition. T. Hill called Stewart in early May 2003 and advised him he should vote in the Union election. In fact Respondents listed Stewart as an eligible voter on the Excelsior list.[61]

In early June 2003, Stewart called the Henderson facility and spoke to Jordan. Stewart said that his therapy would be complete in one to two weeks and wanted to know when he could return from medical leave. Jordan told Stewart that he could not return to work. When Stewart asked why, Jordan said he did not know but he would call Stewart back. Later that day Jordan called Stewart and said he could not return because he did not complete his 90-day probation period. Stewart said that Jordan knew he was on leave of absence. Personnel documents reflect that Stewart was terminated effective March 11, 2003 for job abandonment.

13. The June 23 Change in Job Classifications

The Respondents have wage range guidelines for all bargaining unit positions.[62] On about June 23, 2003 Respondents changed the job classifications of Michael Kight (Kight), Hernan DeDios (De Dios), Joseph Vitek (Vitek), Jimmy Pagtulingan (Pagtulingan), Billy Loyd (Loyd), Antonio Herrera (Herrera), Jesse Gilson (Gilson), Francisco Sandoval (F. Sandoval), Larry Fuller (Fuller), Alberto Banico (Banico), Hernan Fontes (Fontes), Howard Calhoun (Calhoun) and William Tyler (Tyler). Kight's classification changed from mechanical express specialist to PM inspection specialist, with a lower pay scale; DeDios was changed from engine specialist to mechanical express specialist, with a lower pay scale; Vitek was changed from detail specialist to PM inspection specialist, with a higher pay scale; Pagtulingan was changed from pre inspection specialist to drivability specialist, with no change in pay scale; Loyd was changed from brake/tire specialist to shop foreman, an increase in pay scale; Herrera was changed from brake/tire specialist to PM inspection specialist, with a decrease in his pay scale; Gilson was changed from PM inspection specialist to brake/tire specialist, with an increase in his pay scale; F. Sandoval was changed from Brake/tire specialist to PM inspection specialist, with a decrease in his pay scale; Fuller was changed from shop supervisor to engine specialist, with a decrease in his pay scale; Fontes was changed from mechanical express specialist to PM inspection specialist, with a decrease in pay scale; Banico was changed from engine specialist to drivability specialist, with a decrease in pay scale; Calhoun was changed to mechanical express specialist, although the only evidence reflects that he was hired as a mechanical express specialist, and Tyler was changed from transfer driver to trailer specialist, with an increase in his pay scale. In sum of 13 employees who had their job classifications changed, seven resulted in lower pay scales, four resulted in increased pay scales and it appears two employees had no changes in their pay scale.

14. The July 3, 2003 Discipline of Russell Grizzle, Michael Kight, Howard Calhoun, Corey Burkett, Theodore Taylor and Jimmy Pagtulingan

On July 3, 2003, Jordan issued identical written warnings to Grizzle, Kight, Calhoun, Burkett, Taylor and Pagtulingan for poor attendance.[63] Jordan told each employee that they had to call him personally before their shift began if they were going to be absent. The warning stated that failure to contact Jordan personally to report an absence or tardiness, "will be

[61] General Counsel's exhibit 124.
[62] General Counsel's exhibit 368(hh-jj).
[63] General Counsel's exhibit 83.

considered a no call no show [64] situation and will subject you to disciplinary action up to and including termination of employment." There is no evidence that Grizzle, Kight, Pagtulingan, Calhoun, Burkett and Taylor's attendance records were unusually poor in the 30 days preceding the warnings.[65]

15. The July 2003 Terminations

a. The July 2, 2003 Termination of Francisco Watkins

Francisco Watkins (Watkins) was hired by Respondents on October 30, 2002 as a van body specialist at the Henderson facility. Watkins signed a union authorization card on February 12, 2003, attended Union meetings, passed out Union flyers near the Henderson facility in the morning and signed three employee petitions. Watkins was present when the "Remove Fowler" petition was presented to Fowler and, as discussed above at section IV, A, 7, d, was one of the employees who received a written warning for being away from his work area.

In early March 2003, Watkins had a conversation with Jordan outside Watkins' bay. Jordan asked Watkins if he had been saying that U-Haul could not shut down because of the Union. Watkins replied that he said this to one person. Jordan then said that U-Haul could shut the shop down, that they could not afford union wages and that U-Haul was not a union shop. Jordan said he wanted to know where Watkins stood and that people could be terminated because of the Union.

Watkins testified at the objections hearing held on June 10-11, 2003 and, on June 12, 2003 attended a meeting with other employees conducted by Kelly. Kelly thanked the employees for going to the objections hearing and said that their paychecks still came from U-Haul, that U-Haul was not a union shop, so stop acting like it is a union shop, that the insubordination should cease and desist or they would be fired and that if the Union came in, they would deal with it then.[66]

On July 1, 2003, Watkins called the office and spoke to Ozaki. He said he would be unable to come to work because of a sore back. When Ozaki asked Watkins if he wanted Jordan's cell phone number, Watkins said he was at a pay phone, had no more change to make a further call and did not have a pen or paper to write down the number.[67]

On July 2, 2003, Watkins went to work. Before Watkins started work, he spoke to Jordan. Before the conversation started, Watkins asked for a witness to be present. Jordan refused the request. Jordan asked Watkins why he did not go to work on July 1, 2003. Watkins explained he hurt his back when he slipped and fell at home on June 30, 2003. Jordan asked why Watkins did not take his cell phone number when Ozaki offered it. Watkins explained his lack of money, pen or paper at the pay phone. Jordan said that was no excuse and that Watkins had failed to work a 40 hour week for a long time. Jordan said he no longer needed Watkins' services.

---

[64] Id.

[65] General Counsel's exhibit 80, 86, 90, 91, 92, 151(p-r)

[66] Kelly denied saying there was no Union at the Respondents' Las Vegas facilities. Several witnesses who were present at the June 12, 2003 meeting testified consistently that Kelly said there was no Union present at Henderson. However, Watkins was the only witness who testified that Kelly threatened to fire employees if they did not cease the insubordination. Based on the weight of the evidence I credit Kelly and the other witnesses over Watkins.

[67] Watkins did not have a phone in his apartment so had to walk to a nearby grocery store to make the call.

There is no dispute that Watkins had instances of being late and absent from work. However, Watkins called either his supervisor or the Henderson office on each occasion when he was late or absent. Other than the May 30, 2003 discipline, noted above, Watkins had received no discipline for his attendance. However, like Magana, Watkins was warned by T. Hill in April 2003 that he could be dropped to part time status if he did not work a full 80-hour pay period.

b. The July 3, 2003, Joseph Vitek Discharge

Vitek was employed by Respondents on October 2, 2002, as a wash bay employee at the Henderson shop. About five months later, Vitek transferred to the PM side of the shop as a lube technician. Vitek signed a union authorization card and several of the employee petitions.

On July 2, 2003, Vitek and fellow mechanic John Franick (Franick) began engaging in horseplay in their adjoining bays on the PM side of the Henderson repair shop. Initially, Franick threw some nuts and bolts into Vitek's work area. Vitek then threw some nuts and bolts back into Franick's bay. Franick tossed a 12 to 18 inch screwdriver into Vitek's bay and Vitek in turn tossed a crowbar that hit the truck in Franick's bay, a foot or two away from where Franick was standing. The crowbar did not damage the truck. Later, Jordan approached Vitek and told him he should not be engaged in horseplay. Franick and Vitek cleaned up, clocked out, went out for a few beers and drove home together.

On July 3, 2003, Franick did not report to work but Jordan called him on the telephone. Jordan said that fellow employee Peterson said Franick was afraid to work with Vitek. Franick denied he said this and said he would be into work the next day.

On July 3, 2003, Calhoun asked Jordan where Franick was and Jordan said Franick was afraid Vitek would attack him. Calhoun said that was odd because Franick had given Vitek a ride home last night and they are friends. Calhoun had observed the incident on July 2, 2003 between Franick and Vitek so Jordan asked Calhoun to write a statement about what Calhoun had seen. Calhoun prepared a written statement and gave it to Jordan. The following week Jordan approached Calhoun and said the wording in your statement makes it sound like Franick was malicious when he threw the screwdriver at Vitek. You need to change the statement so it shows it was not malicious. Calhoun said he was not going to change the statement but ultimately made changes and filled out a second statement that changed the words "threw a screwdriver" to "tossed a screwdriver."[68]

An undated memo to Kelly dealing with the Vitek-Franick incident reflects that there is confusion in the investigation. The memo admits that some of the evidence reflects that Franick not Vitek instigated the incident. Contrary to the evidence submitted with the memo, the memo reflects that Jordan fired only Vitek because Vitek started the incident and that Franick threw nothing at Vitek.

On July 3, 2003 at about 2:00 p. m. Vitek spoke to Jordan in the Henderson repair shop office and apologized for throwing the crowbar. Jordan said he had "written statements from other employees who say they are afraid of you. You have to go." Jordan did not ask Vitek for his side of the story.

[68] General Counsel's exhibit 94.

c. The July 10, 2003 Termination of Nelson Castro

Nelson Castro (Castro) was hired by Respondents on March 22, 2002 as a mechanical express technician at the Decatur facility. When the Henderson repair shop opened, Castro transferred as a heavy mechanic. Castro signed four of the employee petitions discussed above.

On about July 7, 2003, Loyd told Castro to work on two trucks Loyd characterized as "quickies." Castro told Loyd, "if I made the kind of money you do, it would get done quick." After he began to work on the trucks, Castro realized that both were more complicated than Loyd had led him to believe. Castro noted the additional problems on the back of the work orders.[69] The repairs to the first truck took one and a half days. When Castro began working on the second truck, he noticed a rear end noise. When Castro finished the second truck on July 9, he told Loyd that the truck needed rear-end work. Loyd told Castro to park the truck in the shop yard to wait for parts.

On July 10 Jordan spoke to Castro. Jordan asked Castro if he discussed wages with Loyd and had slowed his work down because of Loyd's wages. Castro admitted he said if he made Loyd's money the trucks would be quickies but denied he had slowed his work. Jordan then said Castro had admitted to slowing down his productivity because of wages and told him he was fired.

Contrary to the assertions of Loyd and Jordan, the work records[70] reflect that Castro performed extensive work on the trucks and did not slow his work down.

16. The August Discharges

a. The August 4, 2003, Discharge of Michael Kight.

Kight was hired by Respondents on January 13, 2003 as a mechanical express technician at the Henderson repair shop. Kight signed a union authorization card and six of the employee petitions presented to Respondents.

In early March 2003, Jordan had a conversation with Kight outside Kight's bay. Jordan asked Kight what he knew about the Union and the big meeting. Kight said it was common knowledge. Jordan said Kight should stop the union activity if he could because if he didn't everyone would lose their jobs. When Mark Nance came over to where Jordan and Kight were standing, Jordan asked Nance "what do you know about this Union stuff?"

When Kight was absent or late for work, he called Jordan and when he was unable to reach Jordan he called the office and spoke with a clerk.[71] As noted above in section IV, A, 14, Kight received a written warning for his attendance on July 3, 2003.

On August 5, 2003, Kight called Jordan to report he would not be in to work due to illness. Jordan told Kight it would be alright if he took the day off but warned Kight not to end up like Mark (Nance). On August 6, 2003, Kight called Jordan on the phone and advised he was still sick but hoped to be in the next day. Jordan replied he would call Kight if he needed him.

[69] General Counsel's exhibit 189(b) and (d).
[70] Id.
[71] General Counsel's exhibit 151(j), (k), (l), (m), (n), (v), (w), (x).

Kight was discharged effective August 4, 2003 for job abandonment. The discharge records reflect that Kight was a no call no show since August 4, 2003,[72] yet Respondents' time and attendance records show Kight did call in on August 5 and 6, 2003 and reported his illness to Jordan.[73]

b. The August 13, 2003, Discharge of William Farran

Farran was employed by Respondents since early 2000 as a mechanic at the Decatur repair facility. Farran transferred to the Henderson repair facility as a mechanic when that shop opened. Farran was the first employee to contact the Union and talked to other employees about the Union. Farran passed out authorizations cards for the Union and signed one himself. He also circulated and signed the employee petitions noted above in section IV, A, 7. Farran presented the petition requesting reinstatement of employees fired on March 7, 2003. Farran testified on behalf of the Union at the representation case hearing in case 28-RC-6159. As noted above, Farran was identified as one of the union leaders by Kelly, Fowler and T. Hill in early March 2003. Farran also received a written warning from Fowler on May 30, 2003 for being out of his work area when presenting an employee petition demanding Fowler's removal as Henderson shop manager.

In late July 2003, Loyd assigned Farran a truck that was overheating. Loyd told Farran to replace the cylinder head gasket. Farran removed the left cylinder head and replaced the gasket with a Victor brand gasket. As he was replacing the left cylinder head, Farran dropped the head and damaged the new gasket. Fellow mechanic Joel King gave Farran another set of two gaskets made by Fel-Pro from a cabinet in Farran's bay that contained extra gaskets. Farran then replaced both cylinder head gaskets, with assistance on one of the cylinder heads from Alberto Banico. Banico observed that the new gasket made a good seal with the cylinder head he and Farran put on the engine.

After installing the new gaskets, Farran took the truck for a test drive. Farran felt the truck performed well other than needing a wheel alignment. The following day Loyd told Farran that the truck was still overheating. Farran performed some tests and concluded that the truck's timing was incorrectly set and reset the timing. Farran test drove the truck for 40 minutes and it did not overheat. Farran returned the truck to Loyd. A day or two later Loyd told Farran to take a test drive in the same truck. Farran noticed that the truck was pinging and that the truck was slightly overheating.[74] Later Farran and Pagtulingan test drove the truck and found it to be pinging. Farran again reset the timing on the road. Since it was close to quitting time, Farran decided to do a final timing check the next day.

About three weeks later mechanic Larry Fuller was asked to work on the truck. Jordan directed Fuller to remove the cylinder heads. Fuller and Jordan removed the driver's side cylinder head to show the gasket. Jordan asked Fuller if the gasket had been on the truck a long time. Fuller said he could not tell. Loyd said it looked like the gasket had been on the engine a long time and Fuller repeated he could not tell. Jordan told Fuller that Farran had reported that he changed the gaskets on the truck and again asked Fuller if he thought Farran had replaced the gaskets. Once again Fuller said he could not tell and asked Jordan if he wanted him to remove the other head. Jordan said no further work was necessary.

[72] General Counsel's exhibit 155

[73] General Counsel's exhibits 151(w) and (x) and 153.

[74] When they returned from the test drive and Farran tested the cooling system, it read 212 degrees. The normal range is 190-195 degrees.

On August 13, 2003, Jordan called Farran to his office. Jordan showed Farran a head gasket and asked if it was the gasket Farran had put on the truck. Farran said he was not sure if it was that gasket but that it was that brand, a Fel-Pro. Jordan accused Farran of not drawing the gasket from parts and of not replacing the gasket on the truck. Farran explained how he had damaged the Victor brand gasket and replaced it from the spare parts locker in his bay. Jordan said it was contrary to company policy to use spare parts. When Farran reminded Jordan of the locker, Jordan denied ever using such parts though Farran had observed Jordan using the spare parts in the past. Farran asked to see the company policy prohibiting use of spare parts but Jordan replied that one existed and Farran's services were no longer needed.

Jordan testified he fired Farran because Farran lied about replacing the two head gaskets.

At the trial herein, Respondents called an expert witness, Paul Pate (Pate),[75] to give his opinion whether Farran changed the gaskets. On December 8, 2003, Pate first looked at the truck engine Farran worked on at the Henderson repair shop. At that time the left hand cylinder and gasket were in the back of the truck. On January 2, 2004, Pate again inspected the truck. It was Pate's opinion that neither of the gaskets had been replaced within the last 230 miles. Pate acknowledged that his opinion was based, in part, on what he had been told by others, including Jordan and Loyd, as well as the work order which showed that parts given to Farran included two Victor gaskets. Pate's opinion is contained in his Independent Inspection Report.[76] Pate acknowledged in his report that the left hand cylinder contained a "fairly new gasket." Pate goes on to recite that the truck parts list contained NAPA (Victor) gaskets but the head gasket observed was a Fel-Pro. Pate then notes that Farran told management he had damaged only one of the NAPA (Victor) gaskets and got a replacement gasket (singular) from another mechanic. Pate removed the right hand head and found a Fel-Pro gasket. Pate concluded that this was not consistent with what Fuller had said. Pate states,

> This is inconsistent with the statements of the technician. Had this technician used one replacement gasket, there would have been a Fel-Pro gasket on the LH (left hand) side, and a NAPA gasket on the RH (right hand) side and on the two intake manifold gaskets. All gaskets (2 cylinder head and 2 intake manifold) were Fel-Pro.[77]

Pate relied upon documents supplied by Respondents to reach his conclusion that Farran replaced only one gasket. This was a handwritten statement[78] purporting to relate Farran's conversation with Jordan and Loyd the day Farran was fired. Pate said he relied upon a statement at the bottom of General Counsel's exhibit 456 (e) to support his conclusion that only one gasket was replaced:

> Bill F. started arguing and saying that the reason why he didn't get another head gasket set from parts is because he had one laying around and used it instead of getting a new head gasket set from parts.

Pate's reliance on this statement to support his conclusion that Farran used only one replacement Fel Pro gasket is misplaced. The context of this statement clearly relates to a

[75] Pate is Dean of Applied Technology at the Community College of Southern Nevada. See Respondent's exhibit 78 for Pates curriculum vitae.
[76] Respondents' exhibit 79.
[77] Id. at p.2
[78] General Counsel's exhibit 456(e).

gasket set which contains more than one gasket. A review of the entire written statement reflects that Farran was referring to more than one gasket.

I find that Pate's misplaced reliance on the above written statement affected his ultimate opinion. Since that opinion was based upon a faulty premise, I give the opinion little weight.

17. The September 2003 Drug Testing and Discharges

In August 2003, at Mark Shoen's request Bob Miner (Miner), UHI repair vice president came to Henderson to turn the shop around.[79] Upon arriving at Henderson, Miner, without consulting with Jordan or UHN president Hogan, decided that only Henderson repair shop employees should be drug tested on September 2, 2003. There was no evidence that employees were using or selling illegal drugs on the job nor was there evidence of a higher than usual rate of accidents or injuries at the Henderson facility. The drug testing was set up with both Jeremy Frank and Kelly's approval through the UHI Human Resources department and the testing was conducted by Miner. Prior to the testing, Miner and Jordan had determined that they would not rehire any employee who retested negative.

On September 2, 2003, all Henderson repair shop employees were told they were required to provide urine samples. The samples were tested at Southwest Laboratories and six employees were found to have failed the test: Rolly Agonoy (Agonoy), Omar Armas (Armas), James Augustine (Augustine), John Franick, Tyrell Peterson (Peterson) and Theodore Taylor (Taylor). Agonoy, Armas, Augustine, Franick, Peterson and Taylor tested positive for amphetamines. Armas tested positive for Phencyclidine and Taylor tested positive for marijuana.[80]

On September 3, 2003, Russell Grizzle (Grizzle) and Corey Burkett (Burkett) were drug tested since they were absent from work on September 2, 2003. They both failed the test. Grizzle tested positive for marijuana and Burkett's test was inconclusive.

The Respondents' *Welcome Aboard* handbook[81] at page 13 sets forth U-Haul's drug policy. The policy states in pertinent part:

> Employees of the U-Haul organization are required to be free from any measurable amounts of illegal drugs, alcohol and/or the illegal use of controlled substances.
>
> Employees involved in work-related injuries/accidents and employees who are treated at a medical facility for work related injuries/accidents will be subject to a drug test.
>
> The company reserves the right to test for substance abuse if reasonable suspicion exists. The company also reserves the right to require employees to submit to random drug tests.

[79] Miner's statement that he was sent to Henderson to turn the shop around is inconsistent with decisions that had already been made by UHI to close Henderson repair facility. See section IV, A, 22, infra.

[80] Despite CGC's contention that the test results were inaccurate, I find no probative evidence to find that the tests were conducted in an inappropriate manner.

[81] General Counsel's exhibit 4.

Respondents may also drug test certain high risk employees such as drivers or equipment operators.[82]

The Respondents' policy also provides for substance abuse leave of absence as expressed in Respondents' *Substance Abuse Leave of Absence Form.*[83] The form states in part:

> I,_____, understand that I have tested positive for the presence of alcohol and/or illegal drugs or their metabolites (urinary by-products of illegal drugs or alcohol). Because of this positive test result, I will be placed on a substance-abuse leave of absence immediately (during which time I will not be eligible for any benefits associated with employment).
>
> I understand that I will have a maximum of 30 days from today in which to take another drug test. I will have only one opportunity to take a drug test within the 30-day period. I understand that the results of any drug test that I take on my own will not be used or considered by U-HAUL International, Inc., or its related companies (collectively "U-HAUL") in any way and that the drug test required by U-HAUL must be analyzed by the same drug-testing laboratory as the original drug test. If I test positive for drugs, or if I do not take a drug retest within the 30-day period, I will be considered to have voluntarily terminated my employment. If I test negative for drugs, I will be eligible for reinstatement. I understand that this eligibility for reinstatement does not guarantee a position with U-HAUL.

Of the seven employees who tested positive for drugs, and the one employee who had an inconclusive result, only Augustine, Grizzle and Peterson were given the opportunity to fill out the *Substance Abuse Leave of Absence Form* and retest.

Peterson was ordered reinstated to his position by Kristi Lockwood (Lockwood) of UHI Human Resources on September 23, 2003. Peterson eventually retested and passed the test. However, after being passed back and forth between Lockwood and Jordan regarding reinstatement, Jordan told Peterson he could not be reinstated because if that happened Jordan would have to reinstate everyone.

Like Peterson, Augustine retested and passed. Jordan told Augustine that he could not be reinstated because he would have to rehire other employees who retested and passed.

Armas told Jordan he was willing to retest. Jordan referred Armas to Lockwood. Despite several calls to Lockwood, Armas was not given an opportunity to retest.

After telling Taylor that he had tested positive, Jordan told Taylor to wait 30 days and then to call Human Resources about the possibility of retesting. Jordan told Taylor to call Kristi "Lakewood" in UHI Human Resources. Following Jordan's instructions, Taylor called UHI Human Resources 30 days later and asked to speak to "Lakewood". Taylor was told no one named Lakewood worked there and in any event he had waited too long and there was nothing they could do since he had not called within 30 days.

After Jordan told Franick that he had tested positive, Franick said he took pills called "Up Your Gas" and gave Jordan samples of the pills. Jordan said he would look into the matter and

[82] General Counsel's exhibit 4G.
[83] General Counsel's exhibit 58(a).

call Franick. Jordan never got back to Franick or provided him with the *Substance Abuse Leave of Absence Form.* Franick tried to contact Jordan but his attempts were not successful.

After he was tested, Agonoy[84] never returned to work because he thought he would be fired. He was never contacted about the results of the drug test.

After Grizzle tested positive, he was given the *Substance Abuse Leave of Absence Form.* Grizzle signed the form but there is no evidence that he retested.

On Friday, September 5, 2003 at about 2:45 p.m., Burkett was told by Ozaki that he had to retake the drug test because the test was inconclusive. Burkett clocked in to work early and later that day called Jordan. Burkett was unsuccessful in contacting Jordan. Burkett called Jordan on Monday September 8, 2003 and agreed to retake the drug test. Jordan said "there is nothing I can do. V(icar Ozaki) has the paperwork and is on vacation." Jordan said nothing about the substance abuse leave policy.

The record reflects that Respondents have conducted drug tests of its employees at various facilities throughout the country.[85] It is also established that Respondents have reinstated employees from substance abuse leave if their retest was negative.[86]

18. The September 2003 Discharges

Respondents measure employee efficiency for their mechanics that perform services on vehicles. Employee efficiency is measured by the amount of time UHI allows for a repair or maintenance in its labor code book versus the actual amount of time an employee is on the clock.[87] Thus, an employee can theoretically have an efficiency rating greater than 100% if they consistently perform work faster than that allowed in the labor code book. At the repair shop level individual employee and overall shop efficiency was measured by efficiency reports that local shop managers could generate.[88] It is obvious however, that the accuracy of the efficiency reports generated by Respondents as exhibits 129, 130 and 186 are of dubious value since they do not account for employees discharged in periods before the reports were generated. Thus, overall repair shop efficiency is not measured accurately since it omits many employees who were terminated or quit.

The only evidence of what objective efficiency standard Respondents' mechanics were expected to maintain was the testimony of William Newton, UHI Manager of Repair Audit, who testified key city repair shop employees were expected to maintain an efficiency rating of 80.3%.

While many of the employees discharged for low efficiency had some months in which their efficiency fell below 80%, the following employees who did not support the Union or who opposed the Union had efficiency ratings consistently below 80% yet were not terminated: team leader Gary Jacobs' ratings were 59.6% for November 2002, 59.6 for December, 86% for January 2003, 99.9% for February, 68% for March, 57.7% for April, 48% for May, 31% for June, 27% for July, 41% for August, 63% for September, 97% for October, 114% for November and 45% for December; team leader Rance Pledger's efficiency ratings were 0% for November 2002, 113% for December 2002, 44% for January 2003, 62% for February, 73% for March,

[84] Mr. Agonoy is deceased.
[85] Respondents' exhibit 100, 102.
[86] Id.
[87] General Counsel's exhibit 41.
[88] General Counsel's exhibits 129, 130, 186.

60.7% for April, 58% for May, 47% for June, 48% for July, 61% for August, 60% for September, 93% for October, 108% for November and 86% for December; employees Morris and Tyler had 0% for the period November 2002 through December 2003; transfer drivers Gene Akin and Linda McKeehan had efficiency ratings well below 80% from June through December 2003.

a. Howard Calhoun

Calhoun was hired by Respondents on January 27, 2003 as a mechanical express specialist at the Henderson repair shop. Calhoun signed a union authorization card and several employee petitions. In April 2003, Calhoun overheard a conversation between Jordan and Rance Pledger. Calhoun was about five feet away. Jordan said that if the shop was closed and Jordan lost his job over the Union, he would meet all of the union supporters out in the parking lot and beat their asses. Jordan then asked Calhoun if he was supporting the Union. Calhoun said he was. A few days after the May 7, 2003 election, Jordan approached a group of employees outside Calhoun's bay. Jordan said, "the union supporters don't know what's coming. There will be a lot of changes, a lot of cracking down." Jordan stated there would be no leaving the bay and going to the bathroom; no more horseplay; and no leaving the bay to get parts. Calhoun was never disciplined or warned about poor performance or poor efficiency prior to his discharge. For the period February to August 2003 Calhoun's efficiency ratings were respectively 67.1%, 53%, 65.2%, 57.4%, 41.5%, 39.5% and 43.7%.

Jordan, with Miner and Loyd present, fired Calhoun on September 5, 2003 for low efficiency.

b. Abel Carreno

Carreno was hired by Respondents on February 4, 2002 as a mechanical express specialist at the Decatur repair shop. He transferred to the Henderson repair shop as a brake specialist. In February 2003, Carreno received a merit raise. Carreno signed a union authorization card and all of the employee petitions. At Henderson Carreno worked on several PM teams. He worked with team leaders Campos, Hohman and Pledger as of March 2003. When Hohman quit in March 2003, Jordan offered Carreno the team leader position. While Campos worked with the tools and assisted members of his team working on trucks, Hohman and Pledger did not. The team leaders not the team members accounted for the time each member of the team worked on a truck. The total time worked on each truck was divided by the team leader among each member of the team including the team leader. Thus, if a team leader did no work but shared equally in the time worked, each team member's time should have been diminished proportionally. In addition if the team leader did not assist team members, fewer trucks could be produced. When Campos was Carreno's team leader, the team produced three trucks per day. When Carreno was on Hohman's team they produced one to two trucks per day. When Pledger was Carreno's team leader, the team produced only one truck per day.

By the time Carreno was working on Pledger's team, a new rule had been implemented by Miner. Miner directed that a truck had to remain in the bay until it was completed, even if it had to await parts. Thus, a team would have insufficient room to move a new truck into the bay to be worked on until the other trucks were completed. Carreno also said that Loyd was not efficient at assigning trucks to PM teams. Carreno's efficiency numbers are consistent with his testimony. His efficiency ratings were 125.1% in October 2002, 71.3% in November, 90% in December, 122.6% in January 2003, 116% in February, 70.7 in March, 68.5% in April, 56.2% in May, 49.2% in June, 49.2% in July to a low of 49.2% in July 2003 and 54.4% in August.[89]

[89] Id.

On September 5, 2003, Miner told Carreno he was discharged for low efficiency. When Carreno told Miner other employees had lower efficiency than he did, Miner said we have made a decision and we are letting you go.

c. Antonio Herrera

Respondents hired Herrera on July 31, 2002 at the Decatur repair shop as a brake/tire specialist. When Herrera transferred to Henderson, he worked as a PM mechanic. Herrera signed a union authorization card and three employee petitions. Herrera's efficiency ratings were 46.2% in October 2002, 44.9% in November, 72.6% in December, 89.6% in January 2003, 91.8% in February, 90.6% in March, 98.8% in April, 89.5% in May, 59.1% in June, 50.6% in July and 63.1% in August. Herrera got fewer trucks to service from Loyd in June, July and August 2003 and had problems getting parts to service trucks in that period. Herrera was never warned or disciplined about low efficiency. On September 8, 2003, Jordan told Herrera he was fired for low efficiency.

d. Elmer Tanglao

Elmer Tanglao (Tanglao) worked for Respondents since December 2, 2002 at the Henderson repair shop as a brake/tire specialist on the PM side of the shop. Tanglao signed a union authorization card and three employee petitions presented to Respondents. Gary Jacobs (Jacobs) was Tanglao's team leader from February 2003 until Tanglao's termination. Jacobs did not assist his team members with work on the trucks and was often unavailable in the work bay if team members had questions or needed parts. Tanglao's efficiency ratings were 80.7% for December 2002, 112.8 % for January 2003, 86.1% for February, 71.9 for March, 52.9% for April, 49.3% for May, 35.6% for June, and 22.7% for July. As noted above, time for each team member was calculated by the team leader and divided equally among the entire team. Thus, each of Jacobs' team members should have had the same efficiency rating as Tanglao. Jacobs, who did not participate in any union activity was never disciplined for his team's low efficiency. Tanglao was never warned or disciplined for low efficiency. On September 5, 2003, Miner told Tanglao he was being fired for low efficiency.

e. The Refusal to Rehire J.J. Medeiros

J.J. Medeiros (Medeiros) was hired by Respondents on March 3, 2003 at the Henderson repair shop as a lube technician. He signed a union authorization card and three employee petitions. On May 30, 2003 Jordan told Medeiros that he was discharged[90] for not meeting minimum standards.

In early September 2003, Medeiros returned to the Henderson repair facility to reapply for a job. After several conversations with Jordan and UHI Human Resources, Medeiros was told by UHI he was eligible for rehire. When Medieros had trouble accessing the application program on the Henderson repair shop computer, he went to the Henderson rental center and filled out an application. Several days later, Medeiros returned to the Henderson repair shop to find out what had happened to his application. When Medeiros got to Henderson he was told by Miner that, "We aren't hiring anyone of them back."

[90] CGC did not allege Medeiros' initial discharge as a violation of the Act.

f. Francisco Sandoval

Respondents hired Sandoval on January 13, 2003 as a brake/tire specialist at the Henderson repair facility. Sandoval signed a union authorization card and four employee petitions.

On June 16, 2003, Sandoval was injured at work and was off work on a medical leave until his full release to work on July 8, 2003. Sandoval was not required to fill out a leave form and did not have to call in on a daily basis. A few days after Sandoval returned to work he discovered that his job title had been changed from brake/tire specialist to PM inspection specialist. Sandoval's hire date had also been changed from January 13, 2003 to July 8, 2003. When he inquired about these changes, Jordan informed Sandoval that UHI told him that since Sandoval was off work more than 10 days he was considered on medical leave and when he returned he had to get a new start date. Jordan said there was nothing he could do as it was up to UHI, Human Resources. A week or two later when Kelly came to Henderson, Sandoval complained about the new hire date and reclassification. Kelly told Sandoval that, "Those are the company rules; that's the way it is; deal with it." A few days later Sandoval again complained about the changes to Jordan. Jordan stated he could not do anything about it because of all the union activity going on and that everything was in a freeze. Jordan and Kelly's position is contrary to UHI policy as set forth in the UHI Human Resources Policy Manual.[91] The manual provides that eligibility for benefits is computed from the employee's hire date. There is no provision that a full time employee returning from medical leave is given a new hire date.

A few weeks later Sandoval asked Jordan and Kelly for a raise. Jordan told Sandoval he would get back to him. Three days later Jordan told Sandoval he couldn't do anything about a raise due to all the drama and bullshit in the shop.

On September 19, 2003, Sandoval told Jordan he was resigning because he could not get any benefits or a raise.

19. The October Discharges of Apollos Bisco, Don Collette and Joel King

a. Apollos Bisco

Bisco was a long-time U-Haul employee, having worked for U-Haul at its Fremont, California repair shop for three years before he was hired at the Decatur repair facility on October 2, 2000. Bisco transferred to Henderson when it opened as a transmission specialist and became a mobile repair unit, i.e. tow truck driver, (MRU) driver in January 2003. Bisco signed a union authorization card and five of the employee petitions.

At the end of January 2003, Bisco requested medical leave to care for a sick child. Bisco filled out a medical leave request form and turned it into Ozaki.[92] He heard nothing more about his request for leave from Respondents. Between May and June 2003, Bisco requested both T. Hill and Michelle Jordan to leave the MRU truck and return to work in the shop because of his son's illness. When Bisco's child's illness got worse at the end of September 2003, Bisco told Michael Jordan he had to quit. Bisco explained his child's condition to Jordan and Jordan gave Bisco resignation paperwork.[93] After signing the voluntary resignation form, Bisco asked

[91] General Counsel's exhibit 408 p.63.
[92] General Counsel's exhibit 241.
[93] General Counsel's exhibit 243(f).

Jordan if resigning would affect receiving his accrued vacation pay since Bisco was two days short of his October 2 anniversary date and Jordan said Bisco would not get his two weeks vacation. Later that day Jordan told Bisco about Family Medical Leave and he gave Bisco names and phone numbers to call at UHI Human Resources. The following day Bisco called UHI Human Resources and was told that he had already been approved for Family Medical Leave. The person Bisco spoke to at UHI said they had his medical leave forms. On October 1, 2003, Bisco spoke to Jordan. Jordan told Bisco that if he went on medical leave he could not get his vacation pay, but, if he resigned Jordan could get Bisco his vacation pay. On October 2 or 3, 2003 Bisco received new medical leave forms but decided to resign so he could get his vacation pay as Jordan promised.

b. Joel King

King was employed by Respondents on January 28, 2002 at the Decatur repair shop as a heavy mechanic. King signed a union authorization card as well as seven employee petitions. King also presented the "Remove Fowler" petition to Fowler and was disciplined, as note above in section IV, A, 7, d. King was selected as union safety coordinator for bargaining unit employees. In September 2003, King made a written report[94] to Nevada's Occupational Safety and Health Enforcement Section (NOSHES), listing alleged violations at the Henderson repair shop. About two weeks later, King observed NOSHES employees at the Henderson shop. King spoke with the NOSHES officials and gave them a statement. On about September 24, 2003, Jordan told Jimmy Pagtulingan that King had thrown himself under a bus for reporting Respondents to NOSHES.

On October 2, 2003, King was installing an inner fender well on a truck. King put a jack under the truck to lift the truck body away from the fender but he did not lift the wheels off the ground. King was not under the truck but above it while installing the fender well. The jack's safety lock was engaged. While working on the truck, Miner and Jordan came up to where King was working. Miner told King he needed to use jack stands.[95] King replied he did not need to use the jack stands since the truck was not off the ground and the jack's safety locks were engaged. King had regularly observed other mechanics installing fender wells without use of jack stands.

About two to three hours later, Jordan told King his services were no longer needed that he was being let go for a safety item.

At the hearing Jordan said King was discharged for repeated safety violations. However, no evidence was produced reflecting such warnings.[96] Fuller told Jordan that he did not use jack stands and that this did not constitute a safety issue.

For the first time on October 3, 2003 Jordan posted a memo in the Henderson repair shop requiring the use of jack stands to support any equipment that was lifted for any reason.[97]

[94] General Counsels exhibit 259.

[95] Jack stands are additional safety equipment that prevents a truck from falling off a jack. The jack King was using had a 12,000-pound lifting capacity and the truck being worked on weighed 4,000 pounds. Only the front part of the truck was lifted. When under a truck, King testified he used jack stands.

[96] King admitted that Miner told King to use jack stands twice in September 2003.

[97] General Counsel's exhibit 232.

c. Don Collette

Respondents hired Collette as a heavy mechanic, on January 28, 2001, at the Decatur facility. Later at Henderson, Collette became the post inspection specialist.[98]

Collette signed a union authorization card and six employee petitions. Collette also testified at the objections hearing. He was identified by management as a union leader by Kelly. On March 4, 2003 Jordan told Collette that his sources said Collette, Garcia, Fuller and Farran are the union leaders. Jordan went on to say that employees were eight votes short of a majority.

When T. Hill made Collette post inspector, he told Collette not to worry about efficiency since he was indirect labor, i.e., the post inspector performed no direct repairs to trucks. Collette used the U-Haul Safety Circle Certification Checklist[99] to post inspect trucks after they had been given the appropriate PM service. In addition in November 2001, Fowler gave Collette a list of 30 additional items he wanted Collette to inspect. As post inspector, Collette made a copy of the Safety Circle Certification Checklist and if a truck did not pass final inspection, he gave a copy of the form to the PM team leader to make corrections. In addition Collette did a test drive after the truck had received its PM service and filled out the PM Road Test form.[100] By February 2003, the final inspection work load was so heavy that Collette was given an assistant.

In April 2003, Fowler gave Collette a U-Haul management bulletin entitled "Equipment Final Inspection at U-Haul Repair Shops".[101] Fowler told Collette he had to complete 15 final inspections a day.

On about September 8, 2003, Henderson parts manager John Georgi (Georgi) told Collette that U-Haul has a list of people to fire. Georgi said, "If they can't get you on drugs, they will get you on efficiency or theft or whatever they can get you on."

Both UHI Repair Vice President Miner and UHN scheduler Loyd testified that in October 2003, they both test drove two trucks Collette had post inspected. Miner said one of the trucks pulled so hard to the left that it rode up on the median and almost into the opposing traffic during the test drive. As a result of this he decided to terminate Collette. Contrary to Miner, Loyd said the truck never rode up on the median but pulled to the left.[102]

On October 3, 2003, Loyd asked Collette to ride with him in two trucks Collette had final inspected a few days earlier. After a normal ride in the first truck, Collette drove the second truck. After driving a few miles, Loyd told Collette to get in the right lane and let go of the steering wheel. After Collette let go of the wheel, the truck drifted slightly to the left after about 50 to 100 feet. Collette returned to the Henderson shop and parked the truck. Loyd said let's go to the office. In the office Miner said what's up with those two trucks? Collette said that they seemed fine. Miner said the first truck had excessive play in the steering wheel. Collette said

[98] The post inspection specialist makes sure that repairs have been satisfactorily completed.
[99] General Counsel's exhibit 370.
[100] General Counsel's exhibit 371.
[101] General Counsel's exhibit 372.
[102] I found Miner to be a hostile and evasive witness given to exaggeration. Loyd also was a reluctant and hostile witness who often was vague and non specific in his answers. On the other hand, I found Collette to be specific, non-hostile and responsive. His demeanor reflected his honesty and integrity. I will credit Collette's version of the events surrounding his discharge. I do not credit the testimony of either Miner or Loyd in any respect.

that it seemed fine. Miner said Collette should not have released the truck with play in the wheel. Collette said to check the Safety Certification papers because he had failed the truck for excessive play and Jordan had signed off on the steering problem.[103] Miner told Ozaki to pull the Safety Certification but they were never shown to Collette nor offered into the record. Miner then said what about the second truck? Collete said it drifted left but that he was told by Jordan to let that go. Both Miner and Loyd testified that one of the trucks Collette inspected veered into the median of Boulder Highway on a test drive. Miner told Collette that he was derelict in his duties and told him to go back to work. Later that day Miner told Collette he had to let him go.

20. The December Discharges

a. Alberto Banico

Banico was hired by Respondents In September 1996 at the Decatur repair shop as a mechanical express specialist. Banico transferred to Henderson in September 2002 and became a drivability specialist, diagnosing trucks that came into Henderson for PM service. Banico signed a union authorization card and six employee petitions.

On June 6, 2003, Banico accompanied Farran to a meeting with Jordan. Farran asked why mechanics were being interrogated by the company lawyer and said you can't do this to our union members. When Jordan asked why Banico was present, Banico said he was with Farran as a witness. Jordan told Banico to return to work. Banico asked for a few minutes and Jordan said, "Get the fuck back to work, we don't need you here." Banico said he had a right to accompany Farran and gave Jordan a *Weingarten* card. Banico took out a tape recorder and held it up about four feet away from Jordan. Shortly thereafter, Banico returned to work. About two hours later, Jordan gave Banico a written warning for insubordination and being away from his work area.[104]

No one ever complained about Banico's efficiency even though his efficiency was consistently below 50%.[105] As a drivability specialist, Fowler said that Banico was not required to maintain any particular level of efficiency.

On December 9, 2003, Miner fired Banico for low efficiency.

b. Richard Essig

Richard Essig (Essig)was hired by Respondents on June 10, 2002, at the Decatur shop as a shipping and receiving clerk. He was supervised by John Georgi. When the Henderson facility opened, Essig worked there in the same capacity. Essig signed five of the employee petitions. In April 2003 T. Hill asked Essig how he felt about the Union. Essig said he had no problem but if the Union came in it would cost Hill money.

[103] General Counsel's exhibit 374(b).

[104] General Counsel's exhibit 53.

[105] Banico does not appear on the efficiency reports after August 2003. See General Counsel's exhibit 129(hh)-(nn). Efficiency reports for the months following August 2003 were run on January 9, 2004, after Banico's termination. This reinforces the conclusion that efficiency reports run after the date of an employee's termination do not include the employee and are not accurate to reflect total shop efficiency.

On December 9, 2003, Miner told Essig he was being terminated because the shop was not as productive as they anticipated. Miner said the shop was moving to Decatur and Essig was not needed anymore.

d. Jesse Gilson

Respondents hired Gilson as a brake/tire specialist on February 24, 2003 in Henderson. Gilson signed a union authorization card and six employee petitions. Gilson also wore a "Vote Yes" Union button on his hat before June 2003 and a union insignia baseball cap until July 2003.

After the drug testing in September 2003, Gilson had little brake lathe work to perform. He was mostly assigned clean up and inventory work by Loyd. In early October 2003, concerned that his efficiency was low, Gilson asked Jordan what he could do to improve his efficiency. Jordan told Gilson to document his hours doing clean up on a shop work order and give it to Ozaki. Gilson recorded his hours and turned them in to Ozaki.[106] In October 2003 Gilson continued to do shop clean up. In November 2003 Gilson did some brake lathe work but also did van body work. In November 2003 Gilson spoke to Jordan and complained he was not getting credit for doing clean up and other work around the shop. Jordan again told Gilson to record his time on a shop work order and he would take care of it. Gilson said he turned in such work orders. Gilson repeatedly told his supervisor, Loyd, that he needed work but Loyd failed to assign enough work to Gilson to keep him busy.

On December 9, 2003, Miner told Gilson he was being terminated for low efficiency. Gilson said he had spent 100 hours in various shop projects but had gotten credit for only 45 hours. Miner said he could only go with the information he had. Gilson had never been warned about low efficiency.

Gilson's efficiency ratings were 60.4% in March 2003, 119.6% in April, 62.7% in May, 82.2% in June, 55.8% in July, 79.2% in August, no efficiency ratings for September and October[107], and 37.3% for November, 2003.[108]

e. Glenn Lingao

Lingao was hired by Respondents in February 1997 at their Fremont, California repair facility. He transferred to the Decatur facility in February 2001 and went to work at the Henderson repair shop when it opened in September 2002. Lingao signed four employee petitions.

At the Henderson repair facility Lingao was a one of five PM team leaders. Each team had six members, including the team leader. The number of teams was gradually reduced and employees were not replaced as they left teams after February 2003. Lingao estimated that in February and March 2003 the PM teams were completing two trucks per day each for a total of 50 per week. By September 2003, after the drug tests, there was only one PM team left, composed mostly of former team leaders and this team was completing only one to two trucks per week, despite a huge backlog.

[106] General Counsel's exhibit 184.

[107] Gilson's absence from the September and October 2003 efficiency reports is, no doubt, due to the fact that those reports were generated in January 2004, after Gilson was fired.

[108] General Counsel's exhibit 129.

In May 2003, after the election, Fowler and Jordan told team leaders that employees could not leave their bays. If employees needed something they should go to the team leader. Smoke breaks should only occur during regular break time. Lingao passed this information along to his team members. Before the election, PM teams were allowed to move trucks in and out of their bays if a truck needed parts that were not yet available. After Miner arrived in August 2003, Jordan told team leaders to keep trucks in the bay even if parts were not available, lowering the number of trucks that could be serviced. Jordan explained that they should keep the trucks in the bays because scheduler, Bill Loyd, was not keeping track of where the trucks were out on the lot. In September 2003 when he was getting fewer trucks to work on Lingao went to Loyd and asked him where the trucks were. Loyd told Lingao that the trucks were being sent to outside vendors. By October 2003, Lingao was removed from the remaining PM team and was performing van body work. In early November 2003 Lingao had a conversation with Jordan regarding Lingao's efficiency. Jordan warned Lingao that his efficiency was low. On December 9, 2003, Miner told Lingao he was fired because of low efficiency. Lingao's efficiency ratings were 73.9% for October 2002, 89.9% for November 2002, 83.6% for December 2002, 91.8% for January 2003, 98.7% for February, 96.5% for March, 108.4% for April, 94.6% for May, 62.9% for June, 58.8% for July,55.1% for August, no rating for September and October,[109] and 43.8% for November 2003.

f. Jimmy Pagtulingan

Pagtulingan was a long-time employee of Respondents, having been hired at the Decatur repair facility in October 1994. Pagtulingan moved to the Henderson repair shop in September 2002 and became a pre inspection specialist. Part of the pre inspector's duties included ordering major parts and getting permission from UHI in Phoenix, Arizona to perform major repairs, including engine and transmission work.[110] T. Hill told Pagtulingan he did not have to worry about his efficiency rating because his duties as pre-inspector made it difficult to maintain high efficiency. In late September 2003, Jordan assured Pagtulingan he did not have to worry about his efficiency since he was a support guy with fluctuating efficiency. Fowler also acknowledged that the pre-inspector did not have to maintain high efficiency.

Pagtulingan engaged in union activities including signing a union authorization card and four employee petitions presented to Respondents.

On about October 16, 2003, Pagtulingan found a flyer entitled "THE REAL VEGAS CREW",[111] calling employees Farran, Collette and King "UNION SCUM", in a truck he was working on. Pagtulingan read the memo and the next day asked Jordan, "What the fuck you guys calling me a Union scum for." Jordan replied, "That flyer came out of the fax machine from Phoenix, and you guys are not the only ones that got it."

On December 10, 2003, Jordan fired Pagtulingan for low efficiency. Pagtulingan's efficiency ratings were 4.5% for October 2002, 30.7% for November 2002, 43.4% for December 2002, 70% for January 2003, 42.2% for February, 63% for March, 56.5% for April, 79% for May, 56.2% for June, 11.4% for July, 39.7% for August, September and October ratings are absent and November 78.4%.

[109] As with other employees terminated before the efficiency reports were generated, Lingao's efficiency is not reported for September and October, since those reports were generated in January 2004 and Lingao was fired in December 2003.

[110] General Counsel's exhibits 177(d), (e) and 254.

[111] General Counsel's exhibit 256.

21. The December 9 Discipline of Larry Fuller

Respondent's hired Fuller as a mechanical express technician on May 8, 2000. Fuller transferred to the Henderson repair shop in September 2002 as a transmission specialist. Fuller has 16 ASE Certifications and is a master heavy mechanic. He engaged in union activities including signing a union authorization card and six employee petitions.

On December 9, 2003, shortly after firing employees for low efficiency, Miner and Jordan conducted a meeting with 12 to 15 employees present. Miner told the employees that Henderson was losing money, that U-Haul couldn't put up with any more losses and that they should stop what they were doing, pack up and be ready to move to Decatur by December 15. After the meeting, Fuller was speaking to two employees and said it was not fair, that employees with no or low efficiency should have been fired first. Miner and Jordan were a few feet away. About an hour later, Jordan came to Fuller's work bay and said, "You shouldn't have been talking about company business. Stay in your bay and do your work." He gave Fuller a written warning.[112] The warning reads:

> On December 9, 2003, Larry Fuller made inappropriate comments following the sequence of events that occurred previously which were business related. This notice is to inform you that this type of behavior will not be accepted or tolerated. We expect from you to perform the task at hand, do business as usual, and stay within the confines of your work area unless otherwise specified by a supervisor.

Fuller had never before been disciplined.

22. The December 15 Closure of the Henderson Repair Shop

On December 15, 2003, Respondents closed the Henderson repair shop and moved all remaining employees to the Decatur facility. The events leading up to the closure of the Henderson repair facility and Respondents' rationale for closing that shop are discussed below.

The first suggestion that Respondents intended to close the Henderson repair shop was at a meeting between Mark Shoen and Dennis O'Connor (O'Connor), UHI manager of storage operations, on about May 27, 2003, less than nine months after the Henderson facility had opened and less than three weeks after the Union had won the election. Mark Shoen told O'Connor, "we have an unproductive shop which is not performing where we want it to perform. . . ." Mark Shoen said he was looking for a better use for the property and asked O'Connor "to see how self-storage would pencil out." In response to Mark Shoen's request, O'Connor prepared a memo dated May 29, 2003 to his supervisor, J.T. Taylor (Taylor), UHI Executive Vice President in charge of UHI operations, which recommended that Henderson repair shop be converted to a self-storage facility.[113] O'Connor acknowledged that the losses exceeding $1,000,000 he cited in his memo may have been in error as was the 2000 date of opening. The memo was rife with errors concerning the losses at Henderson.

The profits and losses for the Henderson repair facility are reflected in the Profit and Loss Statements.[114] These statements show that the Henderson repair facility lost $97,757 in September 2002, the month it opened, lost $82,514 in October 2002, lost $56,535 in November 2002, lost $1,594 in December 2002, earned $14,277 in January 2003, lost $10,485 in February

[112] General Counsel's exhibit 233.
[113] General Counsel's exhibit 375(g).
[114] General Counsel's exhibits 362 and 363.

2003, lost $102,476 in March 2003, due to a one time charge off of $98,114 to adjust inventory, lost $19,927 in April 2003, lost $85,293 in May 2003, lost $82,341 in June 2003, lost $127,986 in July 2003, lost $63,232 in August 2003, lost $102,227 in September 2003, lost $76,878 in October 2003 and lost $67,609 in November 2003.

The Profit and Loss Statements and UHI Director of Repair Analysis and Support Thomas Coffee's testimony both reflect that the Henderson repair facility was budgeted to operate at a loss through December 2003. For the period September 2002 to March 2003, UHI had budgeted the Henderson repair shop to operate at a $178,885 loss. During that same period the Henderson repair shop ran actual losses of $238, 967.[115] Coffee admitted that new repair shops are given at least three months to get up and running.

On June 3, 2003, Coffee sent a memo to Taylor,[116] recommending that the Henderson repair facility lose its key city status. Coffee admitted that at the time he prepared the memo he was not aware that a hiring freeze had been imposed on the Henderson repair shop or that employees had been fired. Mark Shoen reviewed this memo at the time it issued and agreed with it. Accordingly, Henderson lost its key city status.

On June 26, 2003, Coffee sent a memo[117] to UHI Repair Audit Manager Bill Newton, entitled "Updates on Mark's Shops". "Mark" refers to Mark Shoen. The memo discusses the performance of several key city shops, including Henderson. This was the first memo of its kind Newton or Miner had ever seen. Newton testified he had not requested the memo. The memo reflected several key city shops, including Dallas, Texas, Hyattsville, Maryland, Boston, Massachusetts and Nashville, Tennessee performing worse than Henderson in several measured areas, including profit and loss. These shops have not been closed.

Counsel for Respondent UHI refused to provide Profit and Loss Statements, pursuant to subpoena[118] for the key city shops in Dallas, Hyattsville, Boston, and Nashville, similarly situated to the Henderson shop on the ground that the profit and loss statements for those shops are the property of the individual marketing companies and although UHI had access to these profit and loss statements, they could not produce them without authorization of the marketing company. Having found that UHI and the marketing companies are a single employer, having found that UHI had the ability and authority to produce these statements and having found that they are relevant to the issues in this case, I ordered the documents produced. At the hearing, upon Counsel for UHI's refusal to produce the documents, CGC asked the administrative law judge for an adverse inference.

Several choices are available to a judge when a party fails to produce documents under their control pursuant to a subpoena duces tecum. The choice is within the discretion of the judge who may choose any or all of them, depending on the circumstances. A judge may: draw an adverse inference; *Teamsters Local 776 (Pennsy Supply),* 313 NLRB 1148, 1154 (1994); bar a non-complying party from asking questions on direct or cross-examination about the subject matter sought by the subpoena; *Perdue Farms*, 323 NLRB 343, 348 (1997) or; permit the introduction of secondary evidence by the party who has been disadvantaged. *Bannon Mills*, 146 NLRB 611, 614 fn. 4 (1964). Under the circumstances of this case, I find the most appropriate remedy for Respondent UHI's failure to produce the profit and loss statements for

---

[115] General Counsel's exhibit 362(a)-(g).
[116] General Counsel's exhibit 375(a).
[117] General Counsel's exhibit 375(b).
[118] General Counsel's exhibit 454 p.5, item 21.

the key city shops named in the subpoena is to draw an adverse inference. I will infer had the profit and loss statements been produced they would have shown that the subpoenaed key city shops had the same or similar loses as the Henderson repair shop.

In late July or early August 2003 UHI Repair Vice President Miner asked Coffee to put together data on the Henderson repair shop. This request resulted in Coffee's August 13, 2003 memo.[119] Coffee analyzed data concerning the Henderson shop's performance, and recommended that it lose key city status, that it be closed, that Decatur be retained for PM-5 maintenance and that outside vendors perform maintenance and repairs in the Las Vegas, Nevada area. Coffee acknowledged he did not take into account the number of employees that had been fired at the time he made his analysis nor was he able to explain how he determined it was cheaper to use outside vendors rather than Henderson employees.

On August 14, 2003, Mark Shoen issued a memo regarding the Henderson repair facility to Miner, Newton and Taylor and copied Coffee and Frank.[120] The memo stated in part:

> Staff has suggested that we can achieve more cost-effective repair of our fleet in Las Vegas:
>
> 1) By closing the repair facility at Henderson
>
> 2) Moving the U-Haul unique repairs to the Decatur shop and
>
> 3) Adding qualified outside garages to perform the repair which is not unique to U-Haul.

The memo then asked a series of questions and directed that Miner would coordinate the answers.

Miner never suggested to those he coordinated with that the Henderson repair facility should remain open despite the fact that it was described as a state of the art facility with no equivalent in the Las Vegas Area.[121] Miner said that Mark Shoen told him that Henderson was going to close and told Miner to help with the closure and removal of the shop to Decatur. The Henderson repair shop closed on December 15, 2003.

23. Efficiency Standards at Decatur

After the Henderson facility closed in December 2003, Miner held a meeting of mechanics at the Decatur repair shop in December or January 2004. Miner told employees that they had to have 100% efficiency or they would be fired.

24. The February 2004 Terminations

a. The February 10, 2004 Discharge of Norm Snyder

Norm Snyder (Snyder) was hired by Respondents as a van body specialist at the Henderson repair shop in November 2002. Snyder signed six employee petitions. He moved back to the Decatur repair facility when the Henderson shop was closed.

---

[119] General Counsel's exhibit 395(a) and ((b).
[120] General Counsel's exhibit 397(a).
[121] General Counsel's exhibit 397(d).

On about February 10, 2004, Snyder cut his finger at work while using an "Exacto" knife to make a repair to the side of a truck. Snyder washed and bandaged the cut and continued working. The following day, while changing his bandage at work, Decatur repair shop supervisor Bloomberg observed the cut and said, "We have to have that checked, it looks pretty bad." Snyder said it was just a scratch. Bloomberg did not inquire when, where or how Snyder's finger had been cut. Bloomberg got an incident report and drug test form and told Snyder he had to fill out the forms. After Snyder filled out the forms, Bloomberg told him he had to go to the Industrial Medical Group right away. Snyder went to the medical offices, had a urinalysis performed and the treating physician put a bandaid on Snyder's finger, commenting "You came in here for a scratch on your finger?" The following Monday Jordan told Snyder he had failed the drug test due to amphetamines. Jordan told Snyder to give him the names of any medications he was taking. After Snyder listed some cold medications he was taking, Jordan said, "We can't let you work until we clear this up." The following day Snyder brought in his cold medications. The next day Jordan told Snyder he had to put him on 30-day leave and told him to come to work the next day to fill out paperwork. Snyder came to work as instructed but was not given the paperwork by Jordan. The following week Snyder called Jordan and asked if he still had a job. Jordan replied the he could not let Snyder work there anymore. Snyder was never given substance abuse leave forms and was not advised he could retest.

b. The February 11, 2004 Discharge of Shawn Saunders

Respondents hired Shawn Saunders (Sanders) on August 13, 1998 at the Decatur repair facility as a tire specialist/wash bay employee. He transferred to the Henderson repair shop as a brake/tire specialist and returned to Decatur after Henderson closed. Saunders was the union observer at the May 7, 2003 election, was a witness for the Union at the objections hearing, and signed seven employee petitions.

Saunders duties as brake/tire specialist at both Henderson and Decatur repair shops included machining brake drums and rotors, checking batteries and handling tires. At the Henderson shop Gilson assisted Saunders in his duties. When Saunders returned to Decatur he had no assistant and was unable to keep up with the volume of work. Brake drums and rotors began piling up in his work area which was located between work bays.

On February 11, 2004, Saunders had a conversation with Decatur repair shop supervisor Bloomberg. Bloomberg complained that Saunders was not putting out enough work and his area was too dirty. Bloomberg said "Shit rolled down hill . . . and he didn't want to hear anything else about it again or he was going to put it in writing." Bloomberg added that Saunders could not leave his work area without Bloomberg's permission. Saunders' job required him to leave his work area to wash batteries and obtain tires. Saunders decided to quit since he could not get his job done with Bloomberg's restrictions.

25. The March 12, 2004 Discharges

a. Gene Akin

Respondents hired Gene Akin (Akin) as a part-time transfer driver in January 2002 at the Decatur facility. He transferred to the Henderson repair facility when that shop opened and returned to Decatur when Henderson closed. Akin moved trucks between the repair shop, rental centers and dealers. Akin had no union activities. In fact he announced to Jordan, Kelly and Miner on several occasions that he was against the Union.

On March 10, 2004, Jordan told Akin he would be laid off on March 12, 2003. Jordan said Respondent did not need transfer drivers. On March 12, Jordan offered Akin a job in the shop servicing batteries. Akin declined the job offer as too strenuous.

On June 24, 2004 Akin had a conversation with one of UHN's Area Field Managers named Mark. Mark told Akin that UHN needed transfer drivers and Akin should come back to work for U-Haul.

b. Linda McKeehan

Linda McKeehan (McKeehan) began working for Respondents as a part-time transfer driver, like Akin, at the Henderson repair shop on December 3, 2002. McKeehan had no union activities and she told Kelly she was against the Union.

On March 10, 2004, Jordan told McKeehan that she would be laid off on March 12, 2003. Jordan said it came down from Miner. On March 12, 2003, Jordan offered McKeehan another job taking some of the load off Michelle Jordan. McKeehan said she would be interested, however, no job offer was forthcoming. Also on March 12, 2003, Michelle Jordan told McKeehan that UHN managers at rental centers would bring trucks to the Decatur repair center for service and pick them up when they were ready to rent.

26. The September 2004 Refusal to Promote Michael Siefert

Michael Siefert (Siefert) began working for Respondents in the Decatur facility in April 2002 as an engine specialist. About three months later he was promoted to mobile repair unit (MRU). In September 2002 Siefert was assigned to the Henderson shop. In early 2003, Siefert signed an authorization card. On June 2, 2004 Siefert was called as General Counsel's witness in this case and testified that Michael Jordan told he and Dexter Smith that all they had to do to perform PM-5 maintenance was to change the truck's filters, grease the chassis and change the oil. Later on June 4, 2004 Siefert gave testimony concerning an alleged sequestration order violation by Michael Jordan.

In June 2004, Siefert received a raise in pay. In August 2004, Siefert spoke with Decatur repair shop manager Mark Hayes (Hayes) about a raise. About a month later Siefert received a second raise. In October 2004 Hayes offered Siefert a third raise. Also in October 2004, Siefert was twice given tools by Hayes as a reward for his high efficiency rating. The practice of rewarding employees for their high efficiency was instituted by Hayes in September 2004.

In the fall of 2004 the position of Area Field Manager for UHN was vacant. Siefert spoke to UHN President Hogan about the open position. Siefert asked Hogan if he would consider Seifert for the job and Hogan said, "That would not be a bad idea. Let me think about it. I'll get back to you." About 40 minutes later, Hayes told Seifert that he had the position and that he should report to the Area Field Manager's meeting the following week. The following Monday Hayes told Siefert, "I have bad news for you. Go speak to Hogan." Siefert went to Hogan's office where Hogan told him, "You won't get the position. I discussed the position with Phoenix.

We need to wait 'til this whole court thing is over. When this is all over, I'll have a position for you."[122] Hogan admitted telling Siefert he would consider him for the Area Field Manager position and admitted that he told Hayes to tell Siefert to come to the next Area Field Manager's meeting. Hogan claims he did not consider Siefert for the Area Field Manager job because of Siefert's past performance, his attendance record and his appearance.

27. The March 2005 Statements by Shop Manager Mark Hayes.

Hayes admitted that he conducted a meeting with all bargaining unit employees in late February or early March 2005. During the course of the meeting, Hayes held in his hands the charges that the Union had filed in cases 28-CA-19998 and 28-CA-20048. Hayes reviewed each allegation of the charges with the bargaining unit employees and told them he thought the charges were ludicrous. Hayes told the employees that the charges cost Respondents money and that money came off his budget. Hayes said that budget determined the size of pay raises. Hayes added that if bargaining unit employees had a problem about having a barbecue or about getting a pay raise to talk to him. If Hayes was unable to resolve employees' problems they could speak to Hogan but they did not have to go to an outside entity to be heard.

B. The Analysis and Conclusions

Due to the multiple allegations arising from seven complaints and numerous amendments and in order to impose some semblance of order upon this decision, I will discuss the allegations as they appear in the 5th complaint, as amended, in the May 28, 2004 complaint and in the December 29, 2004 complaint.

1. Allegations of Section 8(a)(1) Violations

The 5th complaint, as amended, alleges at paragraphs 6(a) though 6(ll), the May 28, 2004 complaint alleges at paragraphs 6(a) and (b) and the December 29, 2004 complaint alleges at paragraphs 6(a) and (b) multiple instances of violations of Section 8(a)(1) of the Act by various agents of the Respondents.

a. Subparagraph 6(a), as amended,[123]-*What About Unions* Memo[124]

Fifth complaint subparagraph 6(a), as amended, alleges that Respondents, by Joe Shoen, through a memo provided to all employees, threatened its employees with denial of career opportunities if they sought to be represented by a union and solicited grievances from employees.

[122] While Hogan denied telling Siefert that Phoenix told Hogan not to hire Siefert as AFM, this does not refute Siefert's testimony. I have found Hogan's testimony unbelievable. His testimony is inconsistent with UHI records and policy statements. He appeared to have little grasp of his own repair shop operation. Given his incredible testimony that he considered Siefert for "30 seconds" yet told him to go to the Monday AFM meeting, I credit Siefert's statement.

[123] On July 6, 2004 CGC moved to amend 5th Complaint, subparagraph 6(a) to include an allegation that the Joe Shoen *What About Unions* memo included a solicitation of grievances from employees. As there was no objection to the motion, it was granted.

[124] General Counsels' exhibit 4, page 4.

(1) The Evidence

Each new employee of Respondents receives a new employee package that contains a letter from AMERCO and UHI President Joe Shoen entitled *What About Unions?* In addition a copy of this letter was posted at the Henderson repair shop. The letter states:

> Here at U-Haul, the environment is good-both the working conditions and our personal relationships as a team. You can talk to us, and we can talk to you; we hope to keep it that way. Each employee is treated as an individual and is an important participant in the operation of our company.
>
> In today's uncertain world, there are many pressures and anxieties. We want to keep our company free from any artificially created tensions and work interruptions that often arise when a union is on the scene. There are many other companies where employees have chosen not to have a union. We think it a commendable choice.
>
> U-Haul strongly believes that individual consideration in employee-supervisor relationships provides the best climate for you maximum development, teamwork, and the attainment of your goals and those of the company. We do not believe that union representation of our employees would be in the best interest of either the employee or the company.
>
> We believe that a union would be of no advantage to any of us here, nor to our customers, nor to the business growth that we all depend on for our livelihood. We sincerely believe that any outside, third party could seriously impair the relationship between the company and employees, and could retard the growth of our company and the progress of our employees. (emphasis added)
>
> We have enthusiastically accepted our responsibility to provide you with good working conditions, good wages, good benefits, fair treatment, and the personal respect that is rightfully yours. All this is part of your job with U-Haul and need not be "purchased" from an outside, third party.
>
> We know that you want to express your problems, suggestions and comments to us so that we can understand each other better. You have that opportunity here at U-Haul. This can be done without having a union involved in the communication between you and the company. Here you can speak up for yourself at all levels of management. We will listen, and we will do our best to give you a responsible reply. *Furthermore, you should understand that if your supervisor cannot solve your problems, you are expected to see me.* (emphasis added)
>
> E.J. (Joe) Shoen
> Chairman of the Board

(2) Analysis

CGC contends that the last sentence in the fourth paragraph of the *What About Unions* memo contains a threat of denial of career opportunities if employees choose union representation. Respondents took no position concerning this allegation. CGC cites *Tawas*

Industries, 336 NLRB 318, 321 (2001) as authority for the proposition that prediction of adverse consequences of unionization violates Section 8(a)(1) of the Act if they lack an objective factual basis. In *Tawas* the Respondent predicted that other employers would not send their business to Respondent if employees voted to affiliate with the UAW. The Board concluded that such a statement was not protected by Section 8(c) of the Act if it contained a threat of reprisal or if the prediction of effects of unionism were not based on objective facts.

In the instant case, Joe Shoen predicts that the effects of an outside third party, unions, "could retard the growth of our company and the progress of our employees." This is a thinly veiled threat that employee exercise of Section 7 rights could impede their chances for advancement at U-Haul. As such the statement is not protected by Section 8(c) of the Act but rather it violates Section 8(a)(1) of the Act.

CGC also argues that the last sentence in the sixth paragraph of the *What About Unions* memo constitutes and unlawful solicitation of grievances. Respondents contend that this sentence is a classic example of an employer's Section 8(c) right to free speech and does not promise to remedy grievances.

In *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990), the Board found respondent's rule requiring employees to bring work-related complaints to Respondent violated Section 8(a)(1) of the Act since it tended to interfere with employees Section 7 rights to communicate work-related complaints to persons and entities other than respondent, including a union or the Board.

In this case Respondents' policy provides that employees first report complaints to a supervisor and if the issue is not resolved employees are "expected" to report the problem to Joe Shoen. I find that this rule does not state a preference but that compliance is required. The effect of the policy tends to inhibit employees from bringing work-related complaints to persons or entities other than Respondents and thereby restrains employees in the exercise of Section 7 rights. The cases cited by Respondents that indicate a solicitation of grievances without a promise to remedy the grievance does not violate the Act are not apposite in the context of *Kinder-Care*. This rule violates Section 8(a)(1) of the Act. [125]

b. Subparagraphs 6(b)(1) through (4)-the March 3, 2003 allegations concerning Henderson shop manager Terry Hill

These complaint subparagraphs allege that T. Hill threatened employees with plant closure and discharge if the employees selected the Union as their bargaining representative, created an impression that employees' union activities were under surveillance by Respondents and promulgated an overly broad no-solicitation rule by prohibiting employees from talking about the Union.

It is undisputed that at the March 3, 2003 meeting of about 10 mechanics in the Henderson facility lunch room, T. Hill told employees that if the Union came in U-Haul would close the facility. At the same March 3, 2003 meeting T. Hill threatened employees with discharge if they passed out Union literature or attempted to start a Union.

[125] My finding herein does not strictly comport with the allegation in subparagraph 6(a) of the 5th Complaint, as amended. However, the matter was fully litigated at the hearing and there is no prejudice to Respondents. *Hi-Tech Cable Corp.*, 318 NLRB 280 (1995).

The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed by the Act. *Mediplex of Danbury*, 314 NLRB 470, 472, (1994). See, e.g., *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992), citing *American Freightways Co*., 124 NLRB 146, 147 (1959).

In *NLRB v. Gissel Packing Co*., 395 U.S. 575, 617 (1969) the Supreme court noted that Section 8(a)(1) prohibits employer interference, restraint or coercion of employees in the exercise of their rights to self-organization. An employer's threat to close a plant if the employees select the union as their collective bargaining representative is a form of threatened reprisal and violates Section 8(a)(1) of the Act. See also *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Sertafilm, Inc*., 267 NLRB 882 (1983).

Hill's threat that U-Haul would close the Henderson facility because of the employees' union activity was the type of threat intended to restrain, coerce, or interfere with employees Section 7 rights. This threat violated Section 8(a)(1) of the Act as alleged in paragraph 6(b)(1) of the complaint.

Hill's threat of discharge for engaging in union activities is a hallmark violation intended to interfere with employees' Section 7 rights. I find that Respondents violated Section 8(a)(1) of the Act as alleged in paragraph 6(b)(2) of the complaint.

At the March 3, 2003, meeting T. Hill told employees that he understood they were trying to get a union.

The Board's test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement in question that his union activities had been placed under surveillance. In *United Charter Service,* 306 NLRB 150 (1992) the Board held:

> The Board does not require employees to attempt to keep their activities secret before an employer can be found to have created an unlawful impression of surveillance. . . . Further, the Board does not require that an employer's words on their face reveal that the employer acquired its knowledge of the employee's activities by unlawful means. Id. at 151.

The Board has further explained that the idea behind finding 'an impression of surveillance' as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways. Citing *Flexsteel Industries*, 311 NLRB 257 (1993). *Tres Estrellas de Oro*, 329 NLRB 50 (1999).

T. Hill's statement was made in the context of ongoing employee union activity. It also was coupled with threats to close the facility and fire employees. Hill's statement was intended to make employees know that U-Haul was aware of their union activity and knew what was going on. It is reasonable that employees would assume their union activities were being observed. I find Respondents violated Section 8(a)(1) of the Act as alleged in subparagraph 6(b)(3) of the complaint.

At the March 3 meeting, T. Hill said he did not want employees talking about the Union or handing out Union flyers on company property.

An employer may limit employee solicitation during "working time*". Republic Aviation Corp. v. NLRB,* 324 U.S. 793 (1953); *Stoddard-Quirk Mfg. Co.,* 138 NLRB 615 (1962). However rules which limit solicitation during working hours are presumptively invalid. *Our Way, Inc.,* 268 NLRB 394 (1983). Employees may solicit in non working areas or on non working time.

T. Hill did not limit distribution of union literature to "working time". Rather Hill placed a blanket prohibition on the distribution of union literature. By doing so Hill promulgated an overly-broad no-solicitation and no-distribution rule in violation of Section 8(a)(1) of the Act as alleged in paragraph 6(b)(4) of the complaint.

c. Subparagraphs 6(c)(1) through (3)-the early March 2003 allegations concerning shop foreman Michael Jordan

The complaint subparagraphs 6(c)(1) through (3) allege that Jordan threatened employees with discharge and plant closure because they engaged in union activities and interrogated employees about their protected activities.

At the end of February 2003, toward the end of the work day, Jordan grabbed mechanic Nance by the arm told him to "get the hell outside" and said "I want to know what the hell you know about the Union." Jordan added, "We got this new facility and if the union was true that we really had a union trying to come in the doors, that U-Haul would shut the doors of that new facility. That there's no way that those doors will remain open, and we had to do something to stop this union."

In evaluating whether interrogation of employees concerning protected concerted activity violates Section 8(a)(1) of the Act, the Board has considered the totality of the circumstances. The Board considers whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act. *Westwood Health Care Center*, 330 NLRB 935 (2000) See also *Rossmore House*, 269 NLRB 1176, 1178 fn 2 (1984). See *Cumberland Farms*, 307 NLRB 1479 (1992).

Jordan's interrogation of Nance was not a friendly chat but a demand for information about the Union. It was coupled with threats of plant closure by U-Haul and an implied threat that employees would be terminated. These statements were coercive and tended to restrained Nance's exercise of his rights protected by Section 7 of the Act. Therefore Respondents violated Section 8(a)(1) of the Act as alleged in subparagraphs 6(c)(1) through 6(c)(3).

d. Subparagraphs 6(d)(1)and (2)-the March 4, 2003 allegations concerning shop foreman Michael Jordan.

Complaint subparagraphs 6(d)(1) and (2) allege that Jordan interrogated employees about their and others union activities and created the impression that employees' union activities were under surveillance.

On March 4, 2003 Jordan told mechanic Collette that his sources said employees Collette, Garcia, Fuller and Farran are the union leaders. Jordan went on to say that his sources said that employees were eight votes short of a majority.

These statements by Jordan conveyed the impression that Respondents were aware of the ongoing union activities of Respondents' Henderson facility employees, including those mentioned. For the reasons discussed above, I find that Jordan conveyed to Collette that his

and other employees' union activities were under surveillance thereby violating Section 8(a)(1) of the Act as alleged in paragraph 6(d)(2) of the complaint.

I find no evidence that on March 4, 2003, Jordan interrogated an employee about his or other employees' union activities. I will dismiss paragraph 6(d)(1) of the 5th complaint.

e. Subparagraphs 6(e)(1) and (2)-the March 5, 2003 allegations concerning shop foreman Michael Jordan.

The complaint subparagraphs 6(e)(1) and (2) allege that Jordan created an impression employees' union activities were under surveillance and threatened employees with discharge for engaging in union activities.

On March 5, 2003, Jordan met with mechanics Jacobo and Carreno. Jordan told them he had bad experiences with unions. He said they could do what they wanted but that the Union was not the way to go. Jordan added that there were people playing games in the shop and that "we're going to have to get rid of those people."

Jordan's threat to get rid of people who were playing games in the shop was made in the context of discussing his experiences with unions and his opinion that the Union was not the way to go. This was a not so thinly veiled threat that employees engaged in union activities would be fired. This is a coercive statement intended to chill employees' exercise of their rights guaranteed under the Act and violates Section 8(a)(1) as alleged in paragraph 6(e)(2) of the complaint.

I find no evidence of any statement by Jordan on March 5, 2003 that would create the impression that employees union activities were under surveillance. I will dismiss paragraph 6(e)(1) of the 5th complaint.

f. Subparagraphs 6(f)(1) and (2)-the mid April 2003 allegations concerning shop foreman Michael Jordan.

Complaint subparagraphs 6(f)(1) and (2) allege that Jordan interrogated employees about their union activities and threatened employees with unspecified reprisals for engaging in union activities.

In April 2003, Henderson mechanic Calhoun overheard a conversation between Jordan and PM team leader Rance Pledger. Calhoun was about five feet away. Jordan said that if the shop was closed and he lost his job over the Union, he would meet all of the union supporters out in the parking lot and beat their asses. Jordan then asked Calhoun if he was supporting the Union.

While Henderson mechanic Nance was on leave, Jordan visited Nance regularly at the house Nance rented from Jordan. Jordan inquired about the state of Nance's health and during one visit asked Nance how he felt about the Union. When Nance said he wanted better wages, Jordan responded that U-Haul had "plans of shutting the doors down" and they could do it legally. Jordan also said that Farran and Collette were union leaders.

Jordan's question to Calhoun was an improper interrogation concerning Calhoun's union activities. In the context of the previous threats of plant closure and terminations, it was a coercive statement designed to restrict Calhoun's exercise of his Section 7 rights. It is a violation of Section 8(a)(1) of the Act as alleged in paragraph 6(f)(1) of the complaint.

Jordan's additional comments that he would beat union supporters' asses if he lost his job over the Union is also a threat of physical harm calculated to restrain employees from engaging in union activity. It also violates Section 8(a)(1) of the Act as alleged in paragraph 6(f)(2) of the complaint.

Jordan's question to Nance while at Nance's house in mid April 2003 as to how Nance felt about the Union, coupled with the statement that U-Haul could legally shut the Henderson facility down was coercive and tended to restrain Nance in the exercise of his Section 7 rights. I find that Respondents violated Section 8(a)(1) of the Act as alleged in subparagraph 6(f)(1) of the complaint.

Jordan's statement that Farran and Collette were union leaders also created the impression of surveillance of employees' union activities. While not pled, the matter was fully litigated and I find this statement also violated Section 8(a)(1) of the Act.

g. Paragraph 6(g), 6(h), 6(i) and 6(k)-the May 2003 allegations concerning shop foreman Michael Jordan

Complaint paragraph 6(g) alleges that in early May 2003 Jordan interrogated employees about their union activities. Subparagraph 6(h)(1) alleges that on May 8, 2003 Jordan promulgated an overly broad no-solicitation rule prohibiting employees from wearing glasses cords bearing the word "union," subparagraph 6(h)(2) alleges Jordan informed employees it would be futile to select the Union as their bargaining representative, and subparagraph 6(h)(3) alleges that Jordan threatened employees with plant closure for selecting the Union as their bargaining representative. Subparagraph 6(i)(1) alleges that between May 8 and 30, 2003, Jordan threatened employees with plant closure because they selected the Union as their bargaining representative and subparagraph 6(i)(2) alleges Jordan threatened employees with job loss because they selected the Union as their bargaining representative. Paragraph 6(k) alleges that on May 9, 2003 Jordan threatened employees that Respondents would no longer be lenient because they selected the Union as their bargaining representative.

Henderson mechanic Magana attended a barbeque Respondents sponsored about two weeks before the May 7, 2003 election. Magana wore a hat with union insignia. During the barbeque Jordan asked Magana how he was going to vote and Magana said for the Union.

Until May 7, 2003 Henderson mechanic Marks wore an eyeglass cord and button with union insignia. On May 7, 2003, at the parts counter Jordan directed Marks to remove the cord and button while on company property on company time. Jordan told Marks that the shop would never be a Union company. A week later, Jordan told Marks that the Union was going to close the shop and everyone would lose their jobs.

On May 8, 2003 Jordan held a meeting with five other employees in Magana's bay. During the meeting, Jordan is said to have told employees there would be a lot of changes since employees voted the Union in. Absentees and late employees would have to call in, and they could not no-show like they used to do. Employees could not go to other bays for tools, talk to employees in other bays nor go to the bathroom without permission from the team leaders. Jordan said the rules were always there, just never enforced.

Jordan's question to Magana at the May 2003 barbeque was a coercive interrogation because it occurred in the presence of other employees and Respondent's management officials including shop manager Terry Hill, UHI Human Resources Vice President Kelly and UHI

Repair Vice President Fowler. Asking Magana to declare his union sentiments at such a gathering was inherently coercive and restrained him in exercising his Section 7 rights. I find Jordan's interrogation violated Section 8(a)(1) of the Act as alleged in subparagraph 6(g). Contrary to Respondents' contention this comment to Magana was neither isolated nor inconsequential in view of the numerous threats made to employees during the period from March 3, 2003 to May 2003.

The courts and the Board have long held that employees have a Section 7 right to wear union insignia while at work. *See*, *Republic Aviation Inc. v. NLRB*, 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 1372 (1945). The Board has found special circumstances justifying the proscription of union insignia when its display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image which the employer has established, as part of its business plan, through appearance rules for its employees. *Nordstrom, Inc.,* 264 NLRB 698, 700 (1982). *Produce Warehouse of Coram, Inc.*, 329 NLRB 915 (1999).

In determining whether an employer, in furtherance of its public image business objective, may lawfully prohibit uniformed employees who have contact with the public from wearing union insignia, the Board considers the appearance and message of the insignia to determine whether it reasonably may be deemed to interfere with the employer's desired public image. *Nordstrom, Inc.,* Id. at 700-702. See *Page Avjet Corp*., 275 NLRB 773, 776-777 (1985). *United Parcel Service*, 312 NLRB 596 (1993).

The Board has held that customer exposure to union insignia alone does not constitute a special circumstance allowing an employer to prohibit employees from wearing the insignia. *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999).

Respondents' reliance on *Andrews Wire Corp*., 189 NLRB 108 (1971) is misplaced since it falls within the employee safety exception of *Nordstrom, supra* and there is no evidence that the wearing of glasses cords or other insignia created safety concerns for Respondents.

Jordan's direction to Marks to remove his union insignia while on company property and on company time was a blanket prohibition on wearing union insignia without any showing that safety was a consideration. There was no evidence that the wearing of union insignia interfered with Respondents' desired public image. I find Jordan's order to Marks to remove his Union cord and button violated Section 8(a)(1) of the Act as alleged in subparagraph 6(h)(1).

Jordan's statement to Marks that Respondents' Henderson shop would never be a Union shop also violated Section 8(a)(1) of the Act as alleged in subparagraph 6(h)(2) since it expressed the futility of selecting the Union.

I find no evidence that Jordan threatened employees with plant closure as alleged in subparagraph 6(h)(3). I will dismiss that allegation.

Jordan's statement to Marks on about May 13, 2003 that the Union was going to close the shop and everyone would lose their jobs, contrary to Respondents' assertion, is not a statement that the Union had the power to close the shop but rather that Respondents reaction to the Union would be closure of the plant. This is a coercive statement designed to restrain employees exercise of their rights guaranteed by the Act and violated Section 8(a)(1) of the Act as alleged in subparagraphs 6(i)(1) and (2).

Finally, Jordan's May 8, 2003 statements at the employee meeting that there would be a lot of changes since employees voted the Union in including calling in for absences and tardiness, no further no call no show as in the past, and no leaving the work bay or talking to other employees without permission of team leaders constitute reprisals as a result of employees having voted in favor of the Union as their representative the day before. These threats of reprisals violated Section 8(a)(1) of the Act as alleged in paragraph 6(k).

h. Paragraph 6(m)-the May 2003 allegations concerning scheduler William Loyd

Complaint paragraph 6(m) alleges that between May 20 and May 30, 2003 Loyd threatened employees by telling them that he had threatened to shoot a union representative if the representative did not leave the property.

About May 23, 2003, in Marks' bay Loyd asked Marks where he stood on the Union. Marks said that Loyd and everyone else knew where he stood. Loyd replied "a union representative came to visit me and I told him to get off my property or I'll shoot him."

The threat made by supervisor Loyd to shoot the union representative, in the context of Marks' union activity, violated Section 8(a)(1) of the Act as its purpose was to intimidate and threaten employees and cause them to refrain from engaging in protected activity. *Department Store Division of the Dayton Hudson Corp.,* 316 NLRB 477 (1995); *Rainbow Garment Contracting, Inc.,* 314 NLRB 929 (1994).

i. Complaint paragraph 6(n)-the May 20, 2003 allegation concerning UHI Repair Vice President Fowler

Complaint paragraph 6(n) alleges that on May 20, 2003, Fowler threatened employees that they would not receive overtime because they had selected the Union as their bargaining representative.

About May 20, 2003, Marks pulled his MRU vehicle in front of the Henderson office. Fowler came up to Marks and asked why the truck was leaning to one side. Marks explained that the suspension caused the truck to lean right. Fowler said the truck needed repair and told Marks to go to work on the PM side. Marks asked if he could switch with another MRU driver so he could continue to get overtime but Fowler refused saying the Union was not allowing any changes and that he would have to see what could be done with the Union to resolve the situation.

In their brief Respondents argue that Fowler's comment to Marks had nothing to do with the Union and therefore is not violative of Section 8(a)(1) of the Act, citing *The Methodist Home*, 253 NLRB 458, 460, 462 (1980) and *Phoenix Glove Co., Inc*., 268 NLRB 680,697-98 (1984). These cases are inapposite to the facts herein since they involved the issue of whether threats of violence not tied to the election were sufficient to set the election aside.

Contrary to their assertion, Fowler's comment is directly related to the Union. He told Marks there was nothing he could do about overtime because the Union was allowing no changes. This statement was violative of Section 8(a)(1) of the Act because it implicated that due to employees' union activities he would not grant the overtime request and thus tended to restrain employees in exercising Section 7 rights. *Federated Logistics and Operations*, 340 NLRB No. 36 (2003); *Earthgrains Baking Cos.*, 339 NLRB 24 (2003); *Grouse Mountain Associates II,* 333 NLRB No. 157 (2001).

j. Paragraphs 6(o) through 6(q)-the May 21, 2003 termination of foreman Scott Hill

Complaint paragraphs 6(o) through 6(q) allege that Respondents terminated supervisor S. Hill because he refused to commit unfair labor practices.

As more fully discussed above in section IV, A, 10, d, S. Hill was terminated on May 21, 2003. There is no dispute that S. Hill is a supervisor within the meaning of Section 2(11) of the Act.

On about May 19, 2003, S. Hill had a conversation with Fowler after work. Fowler told S. Hill that Fowler believed Farran and other mechanics were running S. Hill's side of the shop and S. Hill had to be firmer with the mechanics. When Hill replied that the mechanics were working with good efficiency and asked how Fowler wanted him to be firmer, Fowler gave no reply.

On May 21, 2003 Fowler told S. Hill he had to discharge him for failing to follow programs and procedures. Fowler did not elaborate on what programs and procedures S. Hill failed to follow. Fowler said he consulted with Kelly before firing S. Hill. Fowler told Kelly that S. Hill was working for the staff rather than for Fowler. Hill got parts for mechanics, swept and mopped their floors, cleaned the bathrooms and emptied mechanics' garbage cans. Fowler said S. Hill "appeared not to be on my team." When asked by CGC about employee petitions, Fowler replied, "Scott knew what was going on, on his side of the building and failed to tell me what was going on, . . ."

In their post-hearing brief CGC argues that Respondents fired S. Hill for refusing to take part in their attempt to cover up unfair labor practices. Respondents contend that employee knowledge of the alleged unlawful reason for discharge of a supervisor is an essential element of a violation of Section 8(a)(1) of the Act and cite *General Engineering, Inc., v. NLRB*, 311 F.2d 570, 573 (9th Cir. 1962) and *Russell Stover Candies, Inc., v. NLRB*, 551 F.2d 204 (8th Cir. 1977). However, in *Parker-Robb Chevrolet, Inc*., 262 NLRB 402, 404 (1982) the Board held that a respondent violates Section 8(a)(1) of the Act if it fires a statutory supervisor for failing to commit unfair labor practices. The Board reasoned that the impact of such a discharge on employees Section 7 rights, coupled with the need to ensure that even statutorily excluded individuals may not be coerced into violating the law compels that they be protected. Accord, *Country Boy Markets* 283 NLRB 122 (1987).

In this case CGC has failed to establish that Respondents encouraged or required that supervisor S. Hill commit unfair labor practices. Fowler did not think S. Hill was on his team or that he was firm enough with members of his team of heavy mechanics, however, it is too great a leap to infer from these comments that Respondent required S. Hill to commit or participate in the commission of unfair labor practices. While Fowler was unhappy that S. Hill did not keep him informed about what was going on with employees' union activities, there is no evidence that Respondents asked S. Hill to engage in unlawful surveillance. In fact S. Hill admitted that Respondents did not ask him to engage in any illegal activity. I will dismiss allegations 6(o) through (q) of the 5th complaint.

k. Subparagraphs 6(r)(1) through (3)-the May 23, 2003 allegations regarding Decatur shop manager Allan Bloomberg.

Complaint subparagraph 6(r)(1) alleges that on May 23, 2003, Bloomberg promulgated an overly broad no-solicitation and no distribution rule prohibiting employees from engaging in protected activity at the Decatur facility during their breaks and lunch periods. Complaint

subparagraph 6(r)(2) alleges that at the same time Bloomberg threatened employees with discharge if they engaged in protected activity. Complaint subparagraph 6(r)(3) restates subparagraph 6(r)(1).

On May 22, 2003, Hernan Fontes, a mechanic at the Decatur repair shop approached shop manager Allan Bloomberg and asked Bloomberg if he wanted to sign a petition for the reinstatement of five employees. After Bloomberg looked at the petition he told Fontes if he continued to circulate the petition he would be fired. About 25 minutes later Bloomberg apologized to Fontes, and told Fontes he could circulate the petition off company property.

Respondents take the position that Bloomberg's apology neutralized his earlier statement. However, Respondents fail to mention that part of Bloomberg's apology was a further prohibition on circulating petitions on company property. Rules which limit solicitation during working hours are presumptively invalid. *Our Way, Inc.,* 268 NLRB 394 (1983). Employees may solicit in non working areas or on non working time. Bloomberg's initial prohibition on circulating the petition without reservation was simply reinforced later as part of his "apology" and did not effect a correction of his earlier statement. Moreover, Bloomberg's threat to fire Fontes if he continued to circulate the Union petition on company property was not dissipated. I find that Respondents violated Section 8(a)(1) of the Act as alleged in subparagraphs 6(r)(1) through (3) of the 5th complaint.

l. Paragraphs 6(s) through (v)-the May 8, 2003 written disciplinary warnings to Henderson mechanics Bill Farran, Omar Armas, Joel King and Francisco Watkins

Complaint paragraphs 6(s) through 6(v) allege that during the period from May 8 to May 30, 2003 Respondents' employees, including Farran, Armas, King and Watkins complained in concert to Respondents about wages, hours, and working conditions of the Henderson facility employees by circulating petitions signed by Respondents' employees concerning the removal of Fowler as Henderson shop manager, the withdrawal of Respondents' objections to the election in case 28-RC-6159 and the reinstatement of terminated employees Jorge Garcia, Salvador Campos, Johnny DeGuzman and Jesus Jacobo and by presenting those petitions to Fowler and Joe Shoen. Paragraphs 6(t) and 6(u) allege that on May 30, 2003 Respondents issued written warnings to Armas, Farran, King and Watkins to discourage employees from engaging in concerted activity. Paragraph 6(v) alleges that by issuing the disciplinary warnings, Respondents promulgated and enforced an overly broad rule prohibiting employees from discussing working conditions during lunch and break times.

Employees Armas, Farran, King and Watkins presented a petition signed by Respondents' employees to Fowler, demanding Fowler's removal as acting Henderson shop manager on May 30, 2003. On May 30, 2003 Fowler issued identical warnings to Armas, Farran, King and Watkins stating that they were away from their work areas and were insubordinate when directed to return to work. Each employee testified they presented the petition on their lunch break and that they were not ordered back to work by Fowler.

Employees Armas, Farran, King and Watkins were engaged in both concerted and union activity when they presented the employee petition to Fowler on May 30, 2003. The order to return to work during their lunch period as well as the written warnings constituted promulgation of an over broad rule prohibiting discussion of working conditions during employee lunch periods and violates Section 8(a)(1) of the Act as alleged in paragraphs 6(u) and 6(v) of the 5th complaint. *Dai Ichi Hotel Saipan Beach*, 337 NLRB 469 (2002); *B & C Contracting Co.*, 334 NLRB 218 (2001).

m. Paragraphs 6(w)(1) through (3)-the June 12, 2003 allegations concerning UHI Human Resources Vice President Henry Kelly

Complaint paragraph 6(w)(1) alleges that on June 12, 2003 Kelly promulgated and overly broad rule prohibiting Respondents' unit employees from acting like Union stewards and from leaving their work stations as Union stewards. Paragraph 6(w)(2) alleges that Kelly told employees it was futile for them to have selected the Union as their bargaining representative and that Respondents were not recognizing the Union stewards. Paragraph 6(w)(3) alleges that Kelly threatened employees with discharge for engaging in union activities.

On June 12, 2003 Watkins attended a meeting with other employees conducted by Kelly. Kelly thanked the employees for going to the objections hearing and said that their paychecks still came from U-Haul, that U-Haul was not a union shop, so stop acting like it is a union shop, that the insubordination should cease and desist or they would be fired and that if the Union came in, they would deal with it then.

Kelly's statements were correct statements of opinion and did not constitute threats or coercion. Kelly's comments did not indicate it was futile for the employees to have selected the Union but rather was made in the undisputed context that there had been no certification of the Union as bargaining representative since objections to the election were pending. Moreover, Kelly did not threaten to terminate employees for engaging in union activity but was referring to unspecified acts of insubordination. I will dismiss these allegations of the complaint.

n. Paragraphs 6(x), 6(y) and 6(z)-the July 2, 2003 Weingarten allegations

Complaint paragraphs 6(x), 6(y) and 6(z) allege than on July 2, 2003 Michael Jordan and William Loyd denied the request of Henderson employee Francisco Watkins to be represented by the Union during an investigatory interview when Watkins had reason to believe that the interview would result in disciplinary action taken against him.

On July 1, 2003, Watkins called the office and spoke to Ozaki. He said he would be unable to come to work because of a sore back. When Ozaki asked Watkins if he wanted Jordan's cell phone number, Watkins said he was at a pay phone, had no more change to make a further call and did not have a pen or paper to write down the number.

Before Watkins started work at Henderson on July 2, 2003, Loyd told him he had to speak to Jordan. Watkins went to Jordan's office where Jordan took both Loyd and Watkins outside the building. Before the conversation started, Watkins asked for a witness to be present. Jordan refused the request and said he just had a few questions. Jordan asked Watkins why he did not go to work on July 1, 2003. Watkins explained he hurt his back when he slipped and fell at home on June 30, 2003. Jordan asked why Watkins did not take his cell phone number when Ozaki offered it. Watkins explained his lack of money, pen or paper at the pay phone. Jordan said that was no excuse and that Watkins had failed to work a 40 hour week for a long time. Jordan said he no longer needed Watkins' services.

It is well established than an employee is entitled to Union representation during an investigatory interview that may lead to discipline or discharge. *NLRB v. J. Weingarten, Inc.,* 420 U.S. 251 (1975). Failure to accord Union representation in such an investigatory interview when requested by the employee violates Section 8(a)(1) of the Act. However, *Weingarten* does not require Union representation at an interview called merely to inform an employee of discipline already decided upon. *Brunswick Elec. Membership Corp.,* 307 NLRB 361 (1992).

Here it is clear that Jordan's interview with Watkins was more than a session informing Watkins of his termination. Jordan clearly was gathering information to support discipline and asked Watkins for an explanation of Watkins absence the day before. Given that Respondents had fired 15 bargaining unit employees between March and July 2, 2003, I find that Watkins had a reasonable belief that this interview could result in discipline. Watkins's request for Union representation triggered an obligation on Respondent's part to allow Union representation. The failure to observe Watkins's request resulted in a violation of Section 8(a)(1) of the Act as alleged in paragraphs 6(x) through 6(z) of the 5th complaint.

o. Paragraph 6(aa)-the August 22, 2003 allegations regarding Michael Jordan

Complaint paragraph 6(aa) alleges that on August 22, 2003 Jordan interrogated employees about their Union and other concerted activities.

On June 16, 2003, Sandoval was injured at work and was off work on a medical leave until his full release to work on July 8, 2003. A few days later Sandoval discovered that his job title had been changed from brake/tire specialist to PM inspection specialist. Sandoval's hire date had also been changed from January 13, 2003 to July 8, 2003. When he inquired about these changes, Jordan informed Sandoval that UHI told him that since Sandoval was off work more than 10 days he was considered on medical leave and when he returned he had to get a new start date. Jordan said there was nothing he could do as it was up to UHI, Human Resources. A week or two later when Kelly came to Henderson, Sandoval complained about the new hire date and reclassification. Kelly told Sandoval that, "Those are the company rules; that's the way it is; deal with it." A few days later Sandoval again complained about the changes to Jordan. Jordan said, "He couldn't do anything about it because of all the union activity going on. Everything was in a freeze."

A few weeks later Sandoval asked Jordan and Kelly for a raise. Jordan told Sandoval he would get back to him. Three days later Jordan told Sandoval he couldn't do anything about a raise due to all the drama and bullshit in the shop.

CGC contends that the statement by Jordan that he could do nothing about Sandoval's new hire date due to the union activity violated Section 8(a)(1) of the Act as alleged in paragraph 6(aa) of the 5th complaint. Jordan's comment was obviously not an interrogation but a statement that he could do nothing because of the union activity. Notwithstanding that this statement does not precisely track the complaint, the issue was fully litigated and I find that the statement violates Section 8(a)(1) of the Act, since Jordan was in essence saying that due to employees' union activity he would not remedy Sandoval's changed hire date. *Federated Logistics and Operations*, 340 NLRB No. 36 (2003); *Earthgrains Baking Cos.,* supra; *Grouse Mountain Associates II,* 333 NLRB 1322 (2001)**.**

p. Paragraph 6(bb)-September 24, 2003 allegations regarding Michael Jordan

Complaint paragraph 6(bb) alleges that on September 24, 2003 Jordan threatened employees with unspecified reprisals for engaging in Union and other concerted activity.

In September 2003, Henderson heavy mechanic King made a written report to Nevada's Occupational Safety and Health Enforcement Section (NOSHES), listing alleged violations at the Henderson repair shop. About two weeks later, King observed NOSHES employees at the Henderson shop. King spoke with the NOSHES officials and gave them a statement. On about

September 24, 2003, Jordan told Henderson mechanic Jimmy Pagtulingan that King had thrown himself under a bus for reporting Respondents to NOSHES.

Jordan's comment that King had thrown himself under a bus was a euphemism meaning King would be fired for engaging in Union and concerted activity in making safety reports to the Nevada Occupational Safety and Health Enforcement Section on behalf of unit employees. Such a statement by the highest ranking U-Haul management official at the Henderson shop is highly coercive and would tend to restrain employees in the exercise of their Section 7 rights as alleged in paragraph 6(bb) of the 5th complaint.

q. Paragraph 6(cc)-the October allegations regarding Michael Jordan

Complaint paragraph 6(cc) alleges that on October 2, 2003, Michael Jordan threatened employees with the loss of accrued vacation pay if they pursued a claim under the Family Medical Leave Act.

At the end of January 2003, Henderson repair shop mechanic Bisco requested medical leave to care for a sick child. Bisco filled out a medical leave request form and turned it into Ozaki. He heard nothing more about his request for leave from Respondents. Between May and June 2003, Bisco asked both T. Hill and Michelle Jordan if he could leave the MRU truck and return to work in the shop because of his son's illness. When Bisco's child's illness got worse in September 2003, Bisco told Michael Jordan he had to quit. Bisco explained his child's condition to Jordan and Jordan gave Bisco resignation paperwork. After receiving the Voluntary Resignation form, Bisco asked Jordan if resigning would affect getting vacation pay since Bisco was two days short of his October 2 anniversary date. Jordan said Bisco would not get his two weeks vacation. Bisco signed the form and began removing his tools. Later that day Jordan told Bisco about family leave and he gave Bisco names and phone numbers to call at UHI Human Resources. The following day Bisco called UHI Human Resources and was told that he had already been approved for family leave. The person Bisco spoke to at UHI said they had his Medical Leave forms. That evening Bisco spoke to Jordan by phone. Jordan told Bisco that if he went on medical leave he could not get his vacation pay but if he resigned Jordan could get Bisco his vacation pay. The following Friday Bisco told Jordan he was going to resign so he could get his vacation pay. Bisco testified that if Jordan had not told him he would lose his vacation pay if he took medical leave he would not have resigned his employment but taken the medical leave.

CGC argues in its post-hearing brief that Jordan conditioned receipt of Bisco's vacation pay on abandonment of medical leave in violation of Section 8(a)(1) of the Act.

Counsel for Respondents contend that Bisco is incredible because he quit without exploring medical leave, because he said he wanted his resignation to stay the way it was and because there is no nexus between Jordan's conduct and any union activity.

It is apparent that Bisco had initiated his voluntary resignation.[126] When Jordan explained that Bisco could not receive his vacation pay since he was a few days short of his anniversary date, Bisco did not change his mind but continued with his resignation by signing the resignation form and removing his tools. However, the next day Bisco's situation changed as he learned for the first time from UHI in Phoenix that he had been approved for Family

[126] While CGC contends that Jordan initiated the idea that Bisco quit, it is clear from the entire context of Vicar Ozaki's testimony that Bisco initiated his own resignation. Transcript volume 37, pages 6041-6044.

Leave. That evening Bisco spoke to Jordan on the phone. Jordan told Bisco, "if you go on medical leave you're not going to receive your vacation pay. But if you decide to quit and resign I have the authority to give you your vacation pay." The following Friday Bisco told Jordan he was going to resign so he could get his vacation pay. Bisco testified he would have taken Family Leave if Jordan had not told him he would lose his vacation pay if he took medical leave.

Contrary to Respondents' assertion, Bisco did explore Family Medical Leave after he resigned and he was told by Respondents Human Resources Department that he was approved for Family Leave. Bisco only continued with his resignation because Jordan conditioned receipt of vacation pay on Bisco's resignation and concomitant abandonment of his approved Family Medical Leave. There is a nexus between Bisco's union activity and Jordan's conditioning vacation pay on Bisco's resignation. Bisco's known union activities are what led Jordan to offer vacation pay Bisco was not yet entitled to receive in exchange for his resignation and abandonment of Family Leave. This was another opportunity for Respondents to rid themselves of union supporter that led to this unlawful offer that violated Section 8(a)(1) of the Act. *Comcast Cablevision of Philadelphia,* 313 NLRB 220 (1993); *Pincus Elevator and Electric Co*., 308 NLRB 684 (1992).

r. Paragraph 6(dd)-the October 2003 'Union Scum' memo

Complaint paragraph 6(dd) alleges that on October 16, 2003 Jordan condoned, permitted and allowed to be distributed a flyer denigrating and humiliating Respondents' employees who engaged in union activities.

On about October 16, 2003, Henderson mechanic Pagtulingan found a flyer in a truck he was working on entitled THE REAL VEGAS CREW,[127] calling employees Farran, Collette and King "UNION SCUM." Pagtulingan read the memo and the next day asked Jordan, "What the fuck you guys calling me a Union scum for." Jordan replied, "That flyer came out of the fax machine from Phoenix, and you guys are not the only ones that got it." There is no evidence that Jordan took any action to disavow the memo or discover who had sent it or who distributed it. However, Jordan confiscated the flyers he observed at the Henderson facility.

CGC takes the position that Jordan's inaction constitutes condonation of the memo and thus violated Section 8(a)(1) of the Act citing *Emarco, Inc*., 284 NLRB 832 (1987). On the other hand Counsel for Respondents argues that General Counsel has failed to establish a nexus between the memo and Respondents. *Panama-Williams, Inc*., 226 NLRB 315 (1976).

There is no evidence that the flyer Pagtulingan found was created or distributed by Respondents. Accordingly Jordan had no obligation to disavow the flyer. Jordan did not condone the content of the flyer but confiscated the flyers he observed. I find no connection between the flyer and Respondents and will dismiss this portion of the complaint.

s. Paragraph 6(ee)-the December 2003 rule

Complaint paragraph 6(ee) alleges that on December 9, 2003 Jordan promulgated and enforced an overly broad rule prohibiting employees from discussing terms and conditions of employment including discharge of employees.

On December 9, 2003 shortly after firing employees for low efficiency, Miner and Jordan conducted a meeting with 12 to 15 employees present. Miner told the employees that

[127] General Counsel's exhibit 256.

Henderson was losing money, that U-Haul couldn't put up with any more losses and that they should stop what they were doing, pack up and be ready to move to Decatur by December 15. After the meeting, Fuller was speaking to two employees and said it was not fair, that employees with no or low efficiency should have been fired first. Miner and Jordan were a few feet away. About an hour later, Jordan came to Fuller's bay and said "You shouldn't have been talking about company business. Stay in your bay and do your work." He gave Fuller a written warning. The warning reads:

> On December 9, 2003, Larry Fuller made inappropriate comments following the sequence of events that occurred previously which were business related. This notice is to inform you that this type of behavior will not be accepted or tolerated. We expect from you to perform the task at hand, do business as usual, and stay within the confines of your work area unless otherwise specified by a supervisor.

The Act protects employees who engage in concerted activity, including discussing wages hours and other terms and conditions of employment. At the time Jordan warned Fuller, Fuller was engaged in protected activity. Both the verbal and written warning was coercive and restrained Fuller in the exercise of his section 7 rights. I find that the written warning to Fuller prohibiting him from discussing terms and conditions of employment violated Section 8(a)(1) of the Act as charged. Moreover, the warning constituted promulgation of an overly broad no-distribution/no-solicitation rule in violation of Section 8(a)(1) of the Act. *Dai Ichi Hotel Saipan Beach*, 337 NLRB 469 (2002); *B & C Contracting Co.*, 334 NLRB 218 (2001).

t. Paragraph 6(ff)-the System Member Confidentiality Agreement

Complaint paragraph 6(ff) alleges that Respondents have maintained a rule called a System Member Confidentiality Agreement. CGC argues that this agreement prohibits employees from communicating wage and salary information to each other or their bargaining representative and thus violates Section 8(a)(1) of the Act.

(1) The Evidence

Each of Respondents' employees is required to sign a System Member Confidentiality Agreement.[128] The agreement provides in pertinent part:

> I,_____, understand that during the course of my employment within the U-Haul System (hereinafter referred to as the "Company"), I will acquire knowledge of trade secrets and other proprietary, confidential information. I acknowledge that such confidential information constitutes valuable assets of the Company and that use or disclosure of such information without the express written authorization of the Company could cause serious harm to the Company.
>
> I understand that confidential information may include, but is not limited to, management bulletins, newsletters, technical reports, unwritten "know-how" for the Company, operating instructions, training manuals, personnel lists, wage-and-salary information, equipment, improvements, financial information or statements, Company contracts, customer information, personnel files, documents generated by internal investigations, retirement-account information, medical information, drug-testing results and correspondence.

[128] General Counsel's exhibit 175.

I agree that I will not at any time during or after my working relationship with the Company, disclose, disseminate or communicate to any person, firm or entity any confidential information without the express written authorization of the Company, except as required in the performance of my duties as explained to me by my supervisor or as may otherwise be required by law.

I understand that the company has placed me in a position of trust in that I have access to and the use of confidential information in the performance of my job. I understand that any violation of the trust placed in me by the Company may cause serious harm to the Company and therefore may result in disciplinary action up to and including termination.

(2) The Analysis

Prohibiting employees from discussing their terms and conditions of employment with each other or their union representatives without a substantial and legitimate business justification violates Section 8(a)(1) of the Act. *Dai-Ichi Hotel Saipan Beach,* 337 NLRB 469, 475 (2002); *Waco, Inc.,* 273 NLRB 747 (1984). No evidence has been proffered to establish a substantial or legitimate business justification for prohibiting employees from discussing wages among themselves, with their union representative or a third party such as the Board. I find the System Member Confidentiality Agreement violates Section 8(a)(1) of the Act.

u. Paragraph 6(gg)-the allegations regarding Repair Vice President Bob Miner refusing to rehire an employee

Complaint paragraph 6(gg) alleges that in late September or early October 2003 Miner told employees they were not rehired because they selected the Union as their bargaining representative.

In early September 2003, Henderson mechanic J.J. Medeiros returned to Henderson to reapply for a job. After several conversations with Jordan and UHI Human Resources, Medeiros was told by UHI he was eligible for rehire. When Medieros had trouble pulling up the application program on the Henderson repair shop computer, he went to the Henderson rental center and filled out an application. Several days later, Medeiros returned to the Henderson repair shop to find out what had happened to his application. When Medeiros got to Henderson he was told by Miner that, “We aren’t hiring anyone of them back.”

CGC takes the position that Miner’s statement that “we aren’t hiring anyone of them back” is a reference to refusing to rehire any employees who supported the Union. An employer who states that they refuse to rehire or reinstate an employee because they engaged in union activity violates Section 8(a)(1) of the Act. *Dayton Newspapers, Inc.,* 339 NLRB No. 79 (2003). I find that Miner was referring to the employees who had been fired because of their union activity when he was speaking to Medeiros. This statement was designed to restrain employees in the exercise of their Section 7 rights. I find that this statement violated Section 8(a)(1) of the Act as alleged.

v. 5th complaint paragraphs 6(hh) to 6(kk)-the suspension and termination of Henderson shop manager Terry Hill

Complaint paragraphs 6(hh) to 6(kk) allege that Respondents suspended supervisor T. Hill on April 29, 2003 and terminated him on May 8, 2003 because he refused to commit unfair labor practices.

As noted in more detail above in section IV, A, 10, a, T. Hill was ordered by Mark Shoen on March 7, 2003 to fire employees to send a message about what happens to employees who engage in union activities. T. Hill fired four employees on March 7, 2003, as ordered. On about April 22, 2003, T. Hill met with Kelly in the lunch room at the Henderson shop. Kelly told T. Hill to write up why he fired the four employees on March 7, 2003 to justify the firings so there would be no unfair labor practices. T. Hill then began to write a memo regarding Garcia's termination but changed his mind and told Kelly, "I won't lie for you or U-Haul." Kelly said, "Write them up about productivity or work performance." T. Hill replied, "That's not why they were fired." Now angry, Kelly said, "I know that. We need the information written up on these employees." The meeting ended with T. Hill stating that he would not lie.

About a week later, T Hill was called into a meeting at the marketing company offices at the Decatur facility. Fowler and Kelly were present. Lanza was not. Kelly said, "You're being removed as shop manager." When T. Hill asked why, Kelly responded, "The shop managers are not in proper uniform. They need to be in white not tan. T. Hill said Fowler told him to use the tan uniforms and Kelly said, "You should not have listened to Fowler." Kelly added, "You'll have a job in the marketing company."

On about May 2, 2003, T. Hill spoke with Lanza about a new position with the marketing company. Lanza said he had been instructed by Kelly to wait until May 8, 2003. Later, on May 8 when T. Hill called Lanza about a job at the marketing company, Lanza deferred to Fowler. When T. Hill called Fowler, Fowler told Hill he was no longer employed by U-Haul and explained Hill was fired for the reason Kelly gave and said, "I have to do what I have to do. What do you want me to tell you." A few days later T. Hill called Mark Shoen and explained he had been fired. Mark Shoen said, "I know that." When T. Hill said that was not fair, Mark Shoen said, "You didn't fire the people for cause." T. Hill said, "There was no cause. They were fired for union activity." Mark Shoen replied, "I know. You didn't fire them for cause."

In their post-hearing brief CGC argues that Respondents fired T. Hill for refusing to take part in their attempt to cover up unfair labor practices. Respondents contend that T. Hill is not a credible witness.[129] Respondents argue against T. Hill's credibility on the ground that he has litigation pending against Respondents and is biased. Respondents attack T. Hill's credibility, arguing it is improbable that Kelly, who was opposed to the terminations would have, in turn fired T. Hill for failure to assist in committing the unfair labor practices. Respondents contend it would have been improbable that Kelly would have the terminations of the four employees investigated if he had pressured T. Hill into falsifying the terminations.[130] As in the case of supervisor S. Hill's termination, Respondents argue that employees must have had actual knowledge of the reason T. Hill was terminated.

In *Parker-Robb Chevrolet, Inc*., 262 NLRB 402, 404 (1982) the Board held that a respondent violates Section 8(a)(1) of the Act if it fires a statutory supervisor for failing to commit unfair labor practices. The Board reasoned that the impact of such a discharge on

[129] I have previously considered T. Hill's credibility above in section IV, A, 10, a.
[130] I have previously found T. Hill a credible witness and I will credit his testimony. See footnote 37.

employees Section 7 rights, coupled with the need to ensure that even statutorily excluded individuals may not be coerced into violating the law compels that they be protected. Accord, *Country Boy Markets* 283 NLRB 122 (1987). There is no requirement of employee knowledge of the actual reasons for the supervisor's termination.

Here there is ample evidence that Respondents fired T. Hill because he refused to assist in the commission of unfair labor practices. Hill was ordered by Mark Shoen to fire employees to send a message about how U-Haul deals with employees' union activities. T. Hill complied and fired employees Garcia, Campos, DeGuzman and Jacobo. When Kelly told T. Hill to prepare documentation to justify the terminations, T. Hill grew remorseful and refused to comply. Kelly admitted he knew the employees were not fired for legitimate reasons but that a pretext was being created. A week later T. Hill was removed as Henderson shop manager for pretextual reasons and a week after that he was fired. Mark Shoen, in a phone conversation with T. Hill, confirmed the pretextual nature of T. Hill's termination. When T. Hill told Mark Shoen his discharge was not fair, Mark Shoen said, "You didn't fire the people for cause." T. Hill said, "There was no cause. They were fired for union activity." Mark Shoen replied, "I know. You didn't fire them for cause."

I find that Respondents suspended and terminated T. Hill because he refused to participate in the commission of unfair labor practices as alleged in paragraphs 6(hh) through 6(kk) of the 5th complaint.

w. Paragraph 6(ll)-the Johnnie's Poultry allegation

Complaint paragraph 6(ll) alleges that on about the first week of August 2004, Respondents through their agent William Perry, a private investigator, interrogated employees about their union activities.

On about July 12, 2004, during the course of this hearing, two private investigators, James Perry and a Mr. Drewry, went to terminated Henderson mechanic Heath William's house. Perry introduced himself to Williams as a former FBI agent and said that they wanted to ask Williams questions about the U-Haul incident.

Williams allowed Perry and Drewry to enter and Drewry questioned Williams about his employment at U-Haul. Drewry asked Williams if he worked for U-Haul, how long he had been employed, what happened with his termination, if there was something he did not like about U-Haul and if this was why he quit, if the Union talked Williams into sabotaging the company. Williams said he did not quit and terminated the conversation. At no time did Perry or Drewry tell Williams the purpose of their visit, who they represented or that the interrogation was voluntary, that he could stop the interrogation any time and that he did not have to talk to them.

CGC contends that Perry and Drewry's interview of Williams was done without advising Williams of his rights as set forth in *Johnnie's Poultry*, 146 NLRB 770, 775 (1964). Respondents argue that since Williams was not employed by Respondents, *Johnnie's Poultry* does not apply.

Of course Respondents' position that Williams was not an employee at the time of the Perry interrogation begs the question of whether Williams, was fired in violation of Section 8(a)(3) of the Act. For the reasons cited, infra, I find Williams was an employee at the time of the interrogation.

There is no dispute that Drewry's firm was hired by Counsel for the New Respondents and Perry in turn was hired by Drewry. I find Perry and Drewry were agents of Counsel for New Respondents and New Respondents themselves.

In *Johnnie's Poultry* the Board set forth safeguards an employer must follow when interrogating employees in its investigation of facts concerning issues raised in a complaint: (1) the purpose of the questioning must be communicated to the employee; (2) an assurance must be given that no reprisal will take place; (3) participation on a voluntary basis must be obtained; (4) the questioning must be free from employer hostility to union organizing; (5) the questions must not be coercive; (6) the questions must be relevant to the issues raised in the complaint; (7) the employee's subjective state of mind must not be probed; and (8) the questions must not otherwise interfere with statutory rights of employees. Id. at 775.

In this case no safeguards were given that the interrogation was voluntary or that there would be no reprisals. Moreover, the entire atmosphere of the case had been permeated by unremedied threats of termination and plant closure. I find that Respondents violated Section 8(a)(1) of the Act in the interrogation of Williams by Perry and Drewry.

x. May 28, 2004 complaint paragraphs 6(a) and 6(b)-allegations concerning UHI Repair Vice President Bob Miner

The May 28, 2004 complaint at paragraphs 6(a) and 6(b) alleges that on December 9, 2003, Miner and Bloomberg threatened employees with plant closure and discharge for selecting the Union as their bargaining representative.

After the Henderson facility closed in December, Miner held a meeting of employees at the Decatur repair shop in December or January 2004. Miner told employees that they had to have 100% efficiency or they would be fired.

As will be discussed in more detail below, there was no requirement for employees to have 100% efficiency. Indeed it was well known that many employees had not been fired by Respondents with efficiencies well below 50%. Miner's statements were coercive and restrained employees in the exercise of their Section 7 rights. I find this statement violated Section 8(a)(1) of the Act.

y. The December 29, 2004 complaint paragraph 6(a) and 6(b) allegations concerning UHN Repair Shop Manager Mark Hayes and UHN President Sterling Hogan.

The December 29, 2004 complaint at paragraph 6(a) alleges that in September 2004 UHN president Hogan threatened employees that they would not be promoted because of their union activities and because of their involvement in the unfair labor practice hearing in cases 28-CA-18575 et. al.

It is well established that threats not to promote due to union or other protected concerted activity, including filing charges with the Board violates Section 8(a)(1) of the Act. *Hospital Shared Services, Inc*., 330 NLRB 317 (1999); *Laidlaw Waste Systems, Inc., 3*07 NLRB 52 (1992); *El Tech Research Corp*., 300 NLRB 522 (1990). After Hogan conferred with his superiors in Phoenix and then told Siefert that he would not be promoted because, "We need to wait 'til this whole court thing is over," it is clear that Hogan's threat violated Section 8(a)(1) of the Act.

The December 29, 2004 complaint at paragraph 6(b) alleges that in February or March 2005 Respondents' Decatur shop manager Mark Hayes denigrated unit employees because the Union had filed charges on their behalf and by requesting that unit employees bypass the Union and the Board and deal directly with Respondents concerning terms and conditions of employment.

Statements that convey the futility of supporting a union or seeking Board redress violate Section 8(a)(1) of the Act. *Anheuser-Busch, Inc*., 337 NLRB 3 (2001) (Threats regarding the filing of charges); *Davis Electric Wallingford Corp*., 318 NLRB 375 (1995) (Respondent's statements that filing charges was costing the employer a ton of money.); *M.K. Morse Co*., 302 NLRB 924 (1991) (Respondent's statement that the cost of filing charges with the NLRB does not come out of the owners pocket but employees' raises).

Direct dealing with unit employees by requiring them to bypass the Union or to forego access to Board process violates the Act. *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990).

Hayes' statement that if he was unable to resolve employees' problems they could speak to Hogan but they did not have to go to an outside entity to be heard, is a restatement of Respondent's "What About Unions" directive not to bring work related issues to outside third parties and violates Section 8(a)(1) of the Act.

2. The Alleged Violations of Section 8(a)(3) of the Act

a. Fifth complaint paragraph 7(a)-the hiring freeze

Complaint paragraph 7(a), as amended, alleges that on about March 3, 2003, Respondents issued a hiring freeze with respect to the Henderson and Decatur facilities and since that date Respondents have failed to fill vacant positions of bargaining unit employees, including the refusal to re-hire J.J. Medeiros in about mid-September 2003.

On March 3, 2003, T. Hill called the UHI Human Resources Department in Phoenix, Arizona and said it was possible that there was a union at the Henderson repair shop. T. Hill was told that UHI Vice President for Human Resources Kelly would contact Hill. Later on March 3, Kelly called T. Hill and said he was in Las Vegas. Kelly said, "I'll be there and take care of the union problem." Kelly told T. Hill to cease all hiring, "because he didn't want to hire in any more Union." On about March 9, 2003 T. Hill and Fowler told Kelly they needed to hire more employees for the Henderson shop. Kelly said, "You can hire employees if they are loyal to U-Haul to change the percent of the vote to U-Haul. Find personal friends and family loyal to you." Thereafter until April 2004 only one unit employee was hired.

Medeiros was hired by Respondents on March 3, 2003 at the Henderson shop as lube technician. He signed a union authorization card and three employee petitions. On May 30, 2003 Jordan told Medeiros that he was discharged for not meeting minimum standards.

In early September 2003, Medeiros returned to Henderson to reapply for a job. After several conversations with Jordan and UHI Human Resources, Medeiros was told by UHI he was eligible for rehire. Several days later, Medeiros returned to the Henderson repair shop to find out what had happened to his application. When Medeiros got to Henderson he was told by Miner that, "We aren't hiring anyone of them back."

CGC has alleged at paragraph 7(a) of the 5th complaint that the hiring freeze imposed by Kelly on about March 3, 2003 violated Section 8(a)(3) of the Act.

Section 8(a)(3) of the Act prohibits employers from discriminating in regard to an employee's, "tenure of employment . . . to encourage or discourage membership in any labor organization."[131]

In 8(a)(3) cases the employer's motivation is frequently in issue, therefore the Board applies a causation test to resolve such questions. *Wright Line*, 251 NLRB 1083, 1088 (1980). The *Wright Line* test requires the General Counsel to make a prima facie showing sufficient to support an inference that the employee's protected conduct motivated the employer's adverse action. "The critical elements of discrimination cases are protected activity known to the employer and hostility toward the protected activity." *Western Plant*, 322 NLRB 183, 194 (1996). Although not conclusive, timing is usually a significant element in finding a prima facie case of discrimination. *Id*. at 194.

In *Anchorage Times Publishing Co*., 237 NLRB 544, 553 (1978), the Board affirmed the administrative law judge's decision finding that a hiring freeze violated section 8(a)(1) of the Act. In *Anchorage Times* the General Counsel alleged that the imposition of a hiring freeze violated Section 8(a)(3) of the Act. However, the judge concluded that the freeze was more in the nature of a curtailment of hiring to allow the employer to engage in the selective hiring to screen out future employees sympathetic to the Union.

In *FES, A Division of Thermo Power,* 331 NLRB 9, 15 (2000) the Board formulated its new test in refusal to hire and refusal to consider for hire cases.

In discriminatory refusal to hire cases General Counsel has the burden of showing that:

> (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. Once this is established, the burden will shift to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation. Id. at 12.

In a discriminatory refusal to consider case General Counsel has the burden of showing that the respondent excluded applicants from a hiring process and that anti-union animus contributed to the decision not to consider. If General Counsel satisfies these elements, the burden shifts to respondent to show it would not have considered the applicant even in the absence of union activity or affiliation. Id at 15. It is significant that the Board adhered to its policy of not requiring that the employer actually be hiring in a refusal to consider case.

In the instant case, it is apparent that the hiring freeze imposed by Kelly was also more in the nature of a curtailment of hiring. As Kelly told T. Hill on March 9, 2003, he could continue

[131] 29 U.S.C. Section 158(a)(3).

hiring if Respondents could continue hiring if the prospective employees were loyal to U-Haul and could change the percentage of the vote in favor of U-Haul.

The policy was still in effect in early September 2003, when former Henderson mechanic Medeiros returned to Henderson to reapply for a job. After several conversations with Jordan and UHI Human Resources, Medeiros was told by UHI he was eligible for rehire. Several days later, Medeiros returned to the Henderson repair shop to find out what had happened to his application. When Medeiros got to Henderson he was told by Miner that, "We aren't hiring anyone of them back."

The intent of the curtailment on hiring imposed by Kelly on March 3, 2003 was to afford Respondents an opportunity to screen out future applicants who would be favorable to the Union. This policy resulted in the hire of Morris who was anti-union and the refusal to consider Medeiros who was a known union advocate, having signed three employee petitions presented to Respondents' management. Like in *Anchorage Times, supra*, I find that the imposition of the hiring freeze violated Section 8(a)(1) of the Act.

While Respondents' may have restricted hiring in violation of Section 8(a)(1) of the Act in imposing the hiring freeze, there is no evidence that at the time Medieros applied for work in early 2003 that Respondents were hiring or had concrete plans to hire in Henderson. Indeed, the evidence reflects that Respondents were well on the way to closing the Henderson repair shop at this time. Thus, the analysis must fall under the refusal to consider formula of *FES*.

I find that Respondents excluded Medeiros from the hiring process and that anti-union animus contributed to the decision not to consider Medeiros when Miner said that Respondents were not "hiring anyone of them back." The "anyone of them" was an obvious reference to employees that had been terminated because of their support for the Union.

In their post-hearing brief Respondents contend that "UHN was under no obligation to hire anyone, let alone a previously discharged employee." Respondents' argument misses the mark. While they may have no obligation to rehire anyone, they have an obligation not to discriminate in their failure to consider an employee for hire due to his Union sympathies. In the absence of union activities Respondents would have continued to hire employees since they were understaffed. I find in failing to consider Medeiros for hire in September 2003, Respondents violated Section 8(a)(3) of the Act as alleged.

b. Paragraph 7(b) and 7(c)-the discharges of Salvador Campos, Johnny DeGuzman, Jesus Jacobo and Jorge Garcia.

Complaint paragraphs 7(b) and (c) allege that on March 7, 2003 Respondents discharges Campos, DeGuzman, Jacobo and Garcia because they engaged in Union or concerted activity and to discourage employees from engaging in these activities.

The union activities of Campos, DeGuzman, Jacobo and Garcia have been established in section IV, A, 6, above. Further, Respondents were aware of these employees' union activities by March 7, 2003. Indeed these four were chosen for termination because, as set forth above in section IV, A, 5, T. Hill thought they were union leaders. Respondents' anti-union animus was also well established by the date of these terminations through the multiple threats of plant closure and discharges that emanated not only from local manager T. Hill but from a member of UHI top management, Mark Shoen, UHI head of Phoenix Operations, AMERCO major stockholder and Five SAC sole stockholder. Indeed it was Mark Shoen who ordered employee terminations on March 7, 2003, to "send a message to the employees that union

activity won't be tolerated." This action was taken with the complicity of UHI executive vice president Ronald Frank who callously overrode Henry Kelly's objections and said, "Let the attorneys sort it out later."

I find that General Counsel had established a prima facie case that Respondents terminated Campos, DeGuzman, Jacobo and Garcia in violation of Section 8(a)(3) of the Act.

Respondents' defenses are nothing but pretext. T. Hill admitted that he found some paperwork and seized upon a shortcoming in the invoice as a pretext to fire Garcia. T. Hill could not find a valid justification for terminating DeGuzman, Jacobo or Campos.

I find Respondents violated Section 8(a)(3) of the Act in terminating Campos, DeGuzman, Jacobo and Garcia.

c. Paragraph 7(d)-allegations concerning change in start, break and end work times

Complaint paragraph 7(d) alleges that on March 10, 2003, Respondents changed the start, break and end work times of its bargaining unit employees at the Henderson facility to discourage employees from engaging in Union or concerted activity.

CGC argues that the time changes were for the purpose of segregating the heavy mechanics from the PM employees and coupled with the terminations of the four employees on March 7 was part of a crackdown on union supporters.

(1) The Facts

Jordan admitted that on about March 10, 2003, Respondents changed the start times, break times and end times of 20 to 25 of the heavy mechanics at the Henderson facility to 8:00 a.m. to 4:00 p.m. Before March 10, 2003 all bargaining unit employees started work at 7:00 a.m. and ended work at 3:30 p.m. This change resulted in the heavy mechanics and PM mechanics having different break and lunch times in addition to different start and end times. According to Jordan these changes were made because of crowding around time clocks when both heavy mechanics and PM side mechanics punched in and out. There is little dispute that there was crowding around the time clocks at these times.

(2) The Analysis

Unilateral changes in hours of employment where motivated by anti-union animus violate Section 8(a)(3) of the Act. *Vincent M. Ippolito, Inc. and Bergen Enterprises,* 313 NLRB 715 (1994). The issue herein is, given the amount of animus demonstrated by Respondents toward employees' union activities, whether the change in hours was motivated by anti-union or legitimate considerations. The consensus of the evidence seems to reflect that there was considerable crowding around time clocks at the beginning of the day and at lunch time. The only evidence suggests that Respondents, in an attempt to alleviate the congestion changed the hours of one group of employees. There is no evidence that this change in hours precluded employees from discussing matters dealing with issues of common concern or from engaging in other protected activity. It does not appear that the effect of the change in hours was motivated by anti-union animus. I will dismiss this portion of the complaint.

d. Paragraph 7(e)-the discharges of Mark Nance and Cody Stewart

Complaint paragraph 7(e), as amended, alleges that Respondents terminated Nance on April 22, 2003 and Stewart on May 22, 2003.

CGC has established each element of a violation of Section 8(a)(3) of the Act in Nance's discharge. As more specifically set forth above in section IV, A, 8, the record reflects that Nance engaged in union activity known to Respondents and was subject to multiple threats of discharge and plant closure. The interrogation of Nance about his and other employees' union activities by both T. Hill and Jordan in early March 2003, reflects that Jordan and T. Hill believed Nance had engaged in union activity. Respondent's anti-union animus has been well established above.

Respondents argue, in defense, that Nance was a no-call/no show, abandoned his job, and would have been discharged in any event because he falsified health forms. I find these arguments are pretext. Jordan knew why Nance was out of work between April 12 and April 22, 2003. While Jordan did not require Nance to fill out a leave request, Jordan had Nance sign a Family Medical Leave Act application which in itself relieved Nance of the requirement to call into work every day. Moreover, since Jordan visited Nance regularly at Nance's home during Nance's medical leave, there was no reason for Nance to call into work each day to tell Jordan why he was out, Jordan was fully aware and knew Nance had not abandoned his job. The argument that Nance somehow falsified records by listing his common law wife, Frances Coltey, on medical benefit forms is specious. This argument is a belated attempt to manufacture a reason for Nance's termination that was not advanced until the trial. Respondents knew that Nance had listed Coltey as a dependent by April 2001 and a UHI benefits specialist told Nance Coltey was not eligible since Nevada does not recognize common law marriages.[132]

I find Respondents terminated Nance in violation of Section 8(a)(3) of the Act, as alleged.

Paragraph 7(e) also alleges Respondents discharged Henderson mechanic Cody Stewart on May 22, 2003. The record reflects Stewart was hired by Respondents on February 12, 2003 as a wash bay employee at the Henderson facility. Stewart went on medical leave on February 18 and was not required to fill out any leave forms. Stewart kept T. Hill and Michelle Jordan advised of his medical condition. During his absence, Stewart signed an authorization card and an employee petition that was presented to Respondents' management. Respondents listed Stewart on the Excelsior list. Stewart voted in the May 7, 2003 election. In early June when he had recovered, Stewart called Michael Jordan and told Jordan he was ready to report to work. However, Jordan told Stewart he could not return to work, since he did not complete his 90 day probation period. Stewart's personnel records reflect that he was discharged for job abandonment.

Stewart was engaged in union activity that was known to Respondents. Respondents' anti-union animus is well documented as are their plans to fire employees engaged in union activity. I find that CGC has established prima facie evidence that Respondents discharged Stewart in violation of Section 8(a)(3) of the Act.

Respondents contend Stewart was discharged for being absent for four months. However, the uncontroverted evidence reflects that Stewart was on approved medical leave.

[132] Nance testified that he and Coulty are from Georgia where common law marriage is recognized.

The pretextual nature of this defense is highlighted in Respondents' discharge documents which reflect that Stewart abandoned his job. There is no evidence that Stewart abandoned his job but rather Respondents knew he was on medical leave and were fully apprised that Stewart intended to return to work following his recovery. I find that Respondents discharged Stewart in violation of Section 8(a)(3) of the Act.

e. Paragraph 7(f)- the discharge of Glenn Ellazar

Complaint paragraph 7(f) alleges that Respondents discharged Ellazar on May 27, 2003.

Ellazar engaged in multiple union activities including signing an authorization card. His union activities were made known to Respondents by signing several employee petitions that were given to Respondents' agents. Ellazar was threatened with termination and plant closure by T. Hill. Respondent's anti-union animus has been previously established. Ellazar was fired shortly after the Union won the election on May 7, 2003.

Respondents argue in defense that Ellazar abandoned his job by failing to call into work in violation of a no call no show policy that was implemented on May 20, 2003. The policy, as noted above in section IV, A, 9, was put into effect without notice to the Union shortly after the May 7 election. There is no dispute that Ellazar called into work on Thursday May 22, 2003 as directed by the new no call no show policy and spoke to Fowler. Ellazar told Fowler he would not be in that day or the next day but would be in the following week. When Ellazar returned to work on the next work day following the Memorial Day holiday on Tuesday May 27, 2003, Fowler told him he was fired for job abandonment.

I find Respondents' defense pretextual. Fowler did not object on May 22 when Ellazar told him he would not be in until the next week. Fowler's precipitous discharge of an employee who had never been previously disciplined or warned for his attendance policy shortly after the Union won the election belies the true reason for Ellazar's termination. As Mark Shoen said on March 7, 2003, U-Haul was sending a message that their employees' union activities would not be tolerated.

I find Respondents terminated Ellazar in violation of Section 8(a)(3) of the Act as alleged.

f. Paragraph 7(g)-the Scott Marks discharge

Complaint paragraph 7(g) alleges that Respondents terminated MRU employee Marks on May 30, 2003.

Marks' union activities included signing an authorization card, several employee petitions that were presented to Respondents and wearing clothing with union insignia. By the nature of his union activities, they were well known to Respondents. As noted above Marks was told not to wear union insignia, was interrogated about his union activity, and was threatened with plant closure and termination in violation of Section 8(a)(1) of the Act. I find that CGC has established a prima facie evidence that Marks was fired in violation of Section 8(a)(3) of the Act.

Respondents contend that Marks was fired for threatening violence in the work place. The record reflects that on May 30, 2003 Jordan told Marks he was fired because Fowler did not want him around. However, in Marks' discharge document Respondents state Marks was fired

for verbally abusing employees and provoking a fight.[133] The events involving the argument with fellow employee Dexter Smith did not occur until May 31, 2003, after he had been fired, when Marks returned to Henderson to retrieve his tools. This belated justification for Marks' discharge clearly establishes that the reasons proffered for Marks' termination were pretextual.

I find Respondents terminated Marks in violation of Section 8(a)(3) of the Act as alleged.

g. Paragraph 7(h)-the Nelson Sandoval termination

Complaint paragraph 7(h) alleges that Respondents terminated Henderson mechanic Sandoval on May 30, 2003.

Sandoval's union activities included signing employee petitions submitted to Respondents. Thus, Respondents knew of Sandoval's union activity. Respondents' anti-Union animus has been well established. Thus each element of an 8(a)(3) violation has been proven.

Respondents contend that Sandoval was fired because he failed to successfully complete his 90-day probationary period because he failed to meet minimum job requirements. However, neither Jordan nor Fowler, who assessed Sandoval's job performance, could remember any of the details of why Sandoval failed to meet the minimum requirements and no documentary evidence was offered to support either Jordan or Fowler's testimony that Sandoval failed to meet minimum requirements. In fact Sandoval had earlier been praised by management for doing a good job. I find Respondent's justification for Sandoval's discharge implausible and without support in the record.

I find that Respondents terminated N. Sandoval in violation of Section 8(a)(3) of the Act as alleged.

h. Paragraph 7(i)-the Alfred Magana discharge

Complaint paragraph 7(i) alleges that Respondents fired Henderson mechanic Magana on May 30, 2003.

Magana's union activities included signing an authorization card, signing employee petitions submitted to Respondents and wearing clothing at work bearing union insignia. Magana debated with Kelly about U-Haul benefits at an employee meeting in late April 2003 and announced he was going to vote for the Union. At the same meeting Jordan interrogated Magana about his union activities in violation of Section 8(a)(1) of the Act. Magana was terminated only a few weeks after the Union won the election. I find CGC has established the elements necessary to establish a violation of Section 8(a)(3) of the Act.

In defense, Respondents argue that Magana would have been terminated notwithstanding his union activities because of his excessive absenteeism and tardiness.

There is no dispute that Magana was often late or absent from work during his entire employment that began with Respondents on January 6, 2003. However, it was not until the end of April 2003 that Respondents began warning Magana about his absences and tardiness when T. Hill said Magana might have to be made a part time employee. However, no discipline resulted from the warning and Magana was not made part time. The day after the election, Jordan told Magana and other employees that there would be changes made since the

[133] General Counsel's exhibit 51.

employees had voted in the Union. Jordan recited the changes including changes in the absentee policy.

At the end of May 2003, Magana received a summons concerning a domestic issue. At this time Magana told Jordan about the problem and said he needed to take some time off work. Jordan told Magana he could take days off to take care of the problem. Jordan said he would give Magana a leave of absence form but Jordan failed to do so. Magana also asked Fowler for the leave slip and Fowler failed to provide it.

The following day, May 29, 2003, Magana came late to work, after having called in to report he would be late and was told to report to Fowler. Fowler said that Magana was absent a lot. Magana showed Fowler his court papers dealing with the domestic issue and said he had gotten permission from Jordan to take a half day or day off. Fowler said Magana had to come to work or be fired. Fowler gave Magana leave of absence forms to fill out and told him to come back to work the next day. Fowler said he would see what he could do about the time off and told Magana to go home, to take the rest of the day off.

On May 30, 2003, Magana again reported to work late, after calling in to report he would be late. Fowler asked Magana why he was late and Magana said I explained it to you yesterday (about the approved time off regarding a domestic relations matter). Fowler told Magana to put it in a call sheet. A short time later Magana was told to go speak with Fowler. Fowler said that Magana was a good worker but that he had to let him go. Magana was fired for excessive absenteeism and tardiness.

While there is evidence that Magana's attendance record was not good, his absence at the end of May 2003 had been excused by Jordan the day before Magana reported late. Fowler ignored Jordan's approval of Magana's time off. Moreover, it appears that until May 30, 2003, Magana's tardiness and absences were excused by Respondents despite their knowledge of his record. On May 8, 2003, the day after the election, Jordan acknowledged that because the Union had won the election work rules that had not been followed, including rules regarding absences and lateness, would now be enforced.

I find that Respondents seized upon a pretext to discharge Magana after months of condoning his tardiness and after having granted him time off to take care of personal business as part of their campaign to more stringently enforce work rules in response to their employees' union activities.

I find that Respondents terminated Magana in violation of Section 8(a)(3) of the Act as alleged.

i. Paragraph 7(j)-the warnings to Henderson mechanics William Farran, Omar Armas, Joel King and Francisco Watkins

Complaint paragraph 7(j) alleges that on May 30, 2003, Respondents issued written warnings to Henderson employees Farran, Armas, King and Watkins.

On May 30, 2003 Henderson employees Farran, Armas, King and Watkins presented a petition signed by Respondents' Henderson employees to UHI Repair Vice President Fowler demanding that Fowler be removed as Henderson acting shop manager. This petition was presented during the employees' lunch break. Fowler issued each employee a written warning stating that they were away from their work areas and refused to return when directed.

I find that the warnings were retaliation for the employees' Union and protected-concerted activity of presenting the employee petition to Fowler. The employees were on their own time and thus could not have been insubordinate in refusing to return to their work area, as they were on lunch break. Given the Respondents' open hostility to the employees' union activity and the timing of the warnings immediately after the petition had been presented, I find that the warnings violated Section 8(a)(1) and (3) of the Act as alleged.

j. Fifth complaint subparagraphs 7(k)(1) through (6)-allegations regarding the May 2003 changes in terms and conditions of employment

Complaint subparagraph 7(k)(1) alleges that after May 7, 2003, Respondents required its bargaining unit employees to sign leave requests for their absences. Subparagraph 7(k)(2) alleges that Respondents more stringently enforced its absentee and tardiness policies.

It has been established above in section IV, A , 9 and 10 that in response to its employees selecting the Union as their bargaining representative, Respondents began a more stringent enforcement of various terms and conditions of employment. Respondents argue that these new rules were implemented to remedy inefficiencies in its business operation. However, Jordan's May 8, 2003 announcement to employees that there would be a new more stringent enforcement of work rules because "employees voted the Union in" is a more plausible explanation for the new rules. It is consistent with UHI head of Phoenix operations Mark Shoen's March 7, 2003 pronouncement that U-Haul would send a message that employees' union activities would not be tolerated.

Thus, the new requirement that employees had to sign leave requests for absences, the requirement that employees had to call in to a supervisor to report lateness and absences, the more rigid enforcement of lateness and absentee policy violated Section 8(a)(3) of the Act as alleged in subparagraphs 7(k)(1) and 7(k)(2).

Subparagraph 7(k)(3) alleges that Respondents changed the status of bargaining unit employees who had been absent from work to that of new employees upon their return to work.

Respondents changed Francisco Sandoval's hire date from January 1, 2003 to July 8, 2003 upon his return from medical leave on July 8, 2003. This policy was inconsistent with Respondents' treatment of employee Jacobo in 2001. Jacobo was off work for one month in 2001 due to a work related injury and did not receive a new start date. This change in hire date is also inconsistent with Respondents' own policy as set forth in the UHI Human Resources Policy Manual. Respondents' assignment of a new start date to F. Sandoval resulted in a delay of both medical and vacation benefits for six months. I find that this policy was another example of Respondents' more restrictive application of work rules due to employees' union activities as Jordan and Mark Shoen had announced. This discriminatory change in Sandoval's case was also in retribution for his specific union activities that included signing an authorization card and four of the employee petitions that were presented to U-Haul management. I find that the change in F. Sandoval's hire date violated Section 8(a)(3) of the Act as alleged in subparagraph 7(k)(3).

Subparagraph 7(k)(4) alleges that Respondents prohibited their employees from leaving their work area without permission.

Jordan also stated on May 8, 2003 that employees would be prohibited from leaving their work bays without their supervisor's permission. This new rule was in fact promulgated

and enforced in the written discipline given to Henderson mechanics Farran, Armas, King and Watkins on May 30, 2003 and to Henderson mechanic Fuller in December 2003.

While Respondents may argue that this policy was to increase efficiency at the Henderson facility, I find that explanation a pretext to disguise Mark Shoen's policy announced on March 7, 2003, amplified by Jordan in his May 8, 2003 statements and as enforced in the May 30 and December 9, 2003 written discipline of employees.

I find that the rule prohibiting employees from leaving their work bays without permission violated Section 8(a)(3) of the Act as alleged in subparagraph 7(k)(4) as alleged.

Subparagraph 7(k)(5) alleges Respondents changed job classifications, pay opportunities and promotional opportunities for bargaining unit employees.

It has been established that on June 23, 2003 Respondents changed the job classifications of about 13 employees. The effect of the changes resulted in seven employees with lower pay scales, four employees with higher pay scales and two employees with no change in their pay scale. There does not appear to be a pattern of discrimination as a result of the job classification and concomitant pay scale changes. Four employees who engaged in known union activities, Vitek, Gilson, Pagtulingan and Calhoun, had increased pay scales or no change in pay as a result of the job classification changes while seven employees with known union activities, Kight, DeDios, Herrera, F. Sandoval, Fuller, Banico, and Fontes had lowered pay scales. One employee whose pay scale was increased, Loyd, was a supervisor. One employee whose union activities are unknown, Tyler, had his pay scale increased.

In sum, I find insufficient evidence that Respondents changed pay rates to discriminate against those who had engaged in union activities in view of the fact that the classification changes also benefited some employees with union activity.

I will dismiss subparagraph 7(k)(5) of the 5th complaint.

Subparagraph 7(k)(6) alleges that Respondents changed their subcontracting practice and increased the subcontracting of bargaining unit work.

(1) The Facts

The evidence reflects that in March 2003, T. Hill said the inability to hire new employees slowed down the production at Henderson. T. Hill discussed this matter with Fowler in March 2003 and told Fowler he was unable to hire employees and he couldn't keep up his quota of trucks. Fowler agreed but said that due to the Union situation, it was best if they didn't hire anyone. Fowler told Hill to increase the use of outside vendors. T. Hill estimated that outside vendors cost about $70 per hour versus in house labor costs of $24 an hour.

Upon assuming the duties of Henderson repair shop manager on May 9, 2003, UHI Repair Vice President Fowler began seeking outside vendors (OSG) to perform repairs on U-Haul trucks because of the overabundance of work at Henderson. Fowler acknowledged that it is more economical to have work performed by unit employees than to subcontract work to outside vendors.

In late July or early August 2003, UHI Repair Vice President Miner asked Coffee to put together data on the Henderson repair shop. This request resulted in Coffee's

August 13, 2003 memo.[134] Coffee analyzed data concerning the Henderson shop's performance, and recommended that it lose key city status, that it be closed, that Decatur be retained for PM 5 maintenance and that outside vendors perform maintenance and repair in the Las Vegas area.

On August 14, 2003, Mark Shoen issued a memo[135] regarding the Henderson repair facility to Miner, Newton and Taylor and copied Coffee and Frank. The memo stated in part:

> Staff has suggested that we can achieve more cost-effective repair of our fleet in Las Vegas:
>
> 4) By closing the repair facility at Henderson
>
> 5) Moving the U-Haul unique repairs to the Decatur shop and
>
> 6) Adding qualified outside garages to perform the repair which is not unique to U-Haul.

Respondents in their post-hearing brief suggest that General Counsel's exhibit 179, a report Respondents' generated reflecting all work subcontracted by UHN at all its shops from June 6, 2002 to August 23, 2003**,** shows that there was no difference in the amount of subcontract work before and after May 7, 2003. A review of General Counsel's exhibit 179 reflects that the number of contracts Respondents issued to outside vendors from about the time the Henderson repair shop opened around September 4, 2002 to about March 3, 2003 when Respondents learned of employees' union activity is about 6900. However for the period March 3, 2003 to August 23, 2003, the end of the reporting period in General Counsel's exhibit 179, the exhibit shows that Respondents issued over 12,500 subcontracts.

(2) The Analysis

The unilateral subcontracting of bargaining unit work motivated by anti-union animus violates Section 8(a)(3) of the Act. *All Seasons Construction*, 336 NLRB 994 (2001). As shown above, Respondents increased subcontracting of bargaining unit work after March 2003, when it learned of its employees' union activity. The timing of the increased subcontracting following discovery of union activity and the Union's selection as collective bargaining representative, strongly suggests that it was motivated by an effort to eliminate bargaining unit positions and ultimately justify closing the Henderson repair facility. The reasons proffered by Respondents for subcontracting include the inability of bargaining unit employees to reduce the backlog of trucks requiring servicing. However, this argument is faulty since the backlog was not the product of inefficient employees but the product of Respondents' hiring freeze coupled with illegal terminations of bargaining unit employees in order to eliminate the bargaining unit. As such the subcontracting violated Section 8(a)(3) of the Act.

k. Fifth complaint paragraph 7(l)-the alleged discharge of Jon Jacks

Complaint paragraph 7(l) alleges that on June 3, 2003, Respondents discharged Henderson mechanic Jacks.

Henderson van body specialist Jacks was involved in union activities that were well known to Respondents in the form of signed employee petitions that were presented to

[134] General Counsel's exhibit 395(a) and ((b).
[135] General Counsel's exhibit 397(a).

Respondents. CGC has established Respondents' anti-union animus as set forth above. I find CGC has set forth the elements necessary to prove a violation of Section 8(a)(3) of the Act.

In their post-hearing brief Respondents appear to contend that Jacks was fired because of excessive absenteeism. However, the record reflects that Respondents fired Jacks for job abandonment for leaving early on May 30 and not returning.[136] Contrary to the termination form, on May 30, 2003, Jacks told Jordan he had to get his license renewed, as Fowler had requested, after lunch and then had to go to class. Jordan gave Jacks permission to leave saying make sure you bring the license on Monday.

On the following Monday and Tuesday there is no dispute that Jacks called in sick to work, as required under the new call in procedure. On Wednesday June 4, 2003 Jacks reported to work. Jordan approached Jacks and said I have to let you go because of what happened on Friday. You took off without telling anyone. Again, the record is clear that Jordan fired Jacks because of his "abandonment" of his job the previous Friday not for excessive absences.

The record is abundantly clear that Respondents' proffered explanation for Jacks' termination is no more than pretext. At Respondents' request Jacks asked and was not surprisingly granted time off on Friday afternoon to renew his driver's license and to attend his required drug class. Jack's did not abandon his job but Respondents seized upon his excused absence as yet another reason to discharge a known union supporter. I find Respondents discharged Jacks in violation of Section 8(a)(3) of the Act as alleged.

l. Fifth complaint paragraph 7(m)-the written warning to Alberto Banico

Complaint paragraph 7(m) alleges that on June 6, 2003 Respondents issued Henderson drivability specialist Banico a written disciplinary warning.

Banico was engaged in known union activity that included signing multiple employee petitions that were presented to Respondents' management officials. In addition on June 6, 2003, Banico engaged in further union activity by accompanying Union shop steward Farran to a meeting with Jordan where Farran asked Jordan why bargaining unit mechanics were being interrogated by the company lawyer. When Jordan asked why Banico was present, Banico said he was with Farran as a witness. Jordan told Banico to return to work. Banico asked for a few minutes and Jordan said, "Get the fuck back to work, we don't need you here." About two hours later, Jordan gave Banico a written warning for insubordination and being away from his work area.

There is no dispute that Jordan gave Banico a written warning for being away from his work area and for refusing to return to his work area. There is no evidence Banico was insubordinate, as he returned to his work area as requested. I have previously found that Respondents' work rule requiring employees to remain in their work areas violated Section 8(a)(3) of the Act. Jordan's warning of Banico was not only enforcement of an unlawful work rule but also was in retaliation for Banico's participation in protected activities while accompanying Farran and is violative of Section 8(a)(3) of the Act as alleged.

[136] General Counsel's exhibit 50.

m. Fifth complaint subparagraph 7(n)(1) and (2)-the June 2003 allegations regarding implementation of new work rules

Complaint subparagraph 7(n)(1) alleges that in June 2003 Respondents implemented and enforced new call in procedures for bargaining unit employees requiring that bargaining unit employees speak personally to a supervisor if they were going to be late or absent from work.

Shortly after Jordan's announcement to employees on May 8, 2003 of more restrictive work rule changes, on about May 20, 2003, Fowler, posted his memo to all employees requiring bargaining unit employees to personally call him if they were going to be late or absent.

On about June 26, 2003, after he became Henderson shop manager, Jordan issued a similar memo to bargaining unit employees requiring that they speak to Jordan personally if they were going to be late or absent.

Before May 20, 2003 employees called the office staff to report that they would be late or absent from work and were not required to call a supervisor.

Both of these memos were part and parcel of the efforts to restrict and restrain the protected activity of bargaining unit employees in retaliation for having voted for the Union on May 7, 2003 as Jordan stated on May 8, 2003 and in furtherance of Mark Shoen's March 7, 2003 stated policy of sending a message to employees that union activity would not be tolerated. Respondents' contention that these rules were intended only to improve efficiency or were the enforcement of extant rules are without merit. Any lack of efficiency was not a product of employee lack of productivity but rather a product of Respondents' hiring freeze, reduction of the work force, poor scheduling, and inability to obtain parts. The evidence reflects that call in procedure implemented by Fowler and Jordan was new and not extant policy. I find that by imposing a more restrictive call in policy, Respondents violated Section 8(a)(3) of the Act as alleged in paragraph 7(n)(1).

Subparagraph 7(n)(2) alleges that Respondents changed its practice of moving trucks in and out of work bays by requiring bargaining unit employees to complete work on trucks before removing the trucks from the work bay.

Before the election, PM teams were allowed to move trucks out of their bays if a truck needed parts that were not yet available. After Miner arrived in August 2003, Jordan told team leaders to keep trucks in the bay even if parts were not available, lowering the number of trucks that could be serviced. Jordan explained that they should keep the trucks in the bays because scheduler, Bill Loyd, was not keeping track of the trucks out on the lot.

CGC argues in its post-hearing brief that the imposition of this new rule had the effect of limiting efficiency and productivity of employees leading to the termination of employees for low productivity and ultimately to the closure of the Henderson facility.

Like the other work rule changes implemented in retaliation for employee union activity, this rule had the effect of lowering employee efficiency and led to further employee terminations, as will be discussed below. Only in the context of union activity does this rule make any sense. If the reason for the rule, as Jordan contended, was because Loyd was not keeping track of the trucks on the lot, why was he retained when Respondent was terminating employees for lack of efficiency? As many Henderson mechanics testified, this rule created a logjam of trucks in the Henderson work bays waiting for parts. In the past, if a truck could not be serviced because it was awaiting parts, the truck was removed from the work bay and another truck ready to be

serviced was brought into the bay. The only plausible explanation for a rule that reduced the amount of trucks that could be serviced was a further pretext to terminate employees justifying a reason for closing the Henderson facility. I find that the rule violates Section 8(a)(3) of the Act as alleged in paragraph 7(n)(2).

n. Paragraph 7(o), as amended-the allegations regarding the June 2003 terminations of Aubrey Church and Heath Williams

Complaint paragraph 7(o), as amended, alleges that in June 2003 Respondent terminated Henderson employees Church and Williams.

(1) Aubrey Church

Church engaged in union activity that was known to Respondents in signing the "Vote Yes" employee petition that was presented to Respondents. Given the established anti-union hostility previously exhibited by Respondents toward employee union activity, I find CGC has established a prima facie case that Respondents have violated Section 8(a)(3) of the Act in terminating Church.

Respondents contend that they would have fired Church notwithstanding his union activity because he abandoned his job. I find this reason a patent pretext.

On about May 15, 2003, Jordan granted Church's request for a few days off to take care of personal matters. At this time there was no requirement to call in personally each day to a supervisor. Jordan did not require Church to call in each day or to fill out any leave forms. Not only did Church not abandon his job, he had been given permission by Jordan to be absent. Church's past attendance record is irrelevant as Respondents contend he abandoned his job. Church's reason for his absence is likewise irrelevant as Respondents granted him permission to be absent.

I find Respondents violated Section 8(a)(3) of the Act in terminating Church.

(2) Heath Williams

Williams likewise engaged in union activity known to Respondents including signing two employee petitions presented to Respondents. As in Church's case, Respondents' anti-union animus is well established. Accordingly, CGC has established each element necessary to prove a violation of Section 8(a)(3) of the Act and the burden shifts to Respondents to show that they would have terminated Williams notwithstanding his union activity.

Like Church, Respondents argue that Williams abandoned his job. On June 10, 2003 Jordan gave Williams permission to leave work two hours early to take care of personal matters. As in the case of Church, Respondents seized upon a pretext and despite having authorized Williams to leave work early, despite the fact that Williams was an employee who had never been disciplined, despite the fact that Respondents knew Williams left only two hours early to care for his immediate family being imminently evicted, Respondents have the temerity to assert that Williams abandoned his job. I reject this argument as being created out of whole cloth and find that Respondents terminated Williams in violation of Section 8(a)(3) of the Act as alleged.

o. Paragraph 7(p)-the allegations regarding the discharge of Francisco Watkins

Complaint paragraph 7(p) alleges that Respondents terminated Henderson employee Watkins on July 2, 2003.

Watkins was actively engaged in union activities that were well known to Respondents including signing several employee petitions. Watkins was one of the employees warned for presenting the employee petition to Fowler on May 30, 2003, demanding his removal as Henderson shop manager. CGC has established its prima facie case that Respondents discharged Watkins for engaging in union activity. The burden shifts to Respondents to show they would have terminated Watkins despite his union activity.

Respondents argue that Watkins was terminated for failing to call directly in to Jordan and for excessive absences and tardiness.

There is no dispute that in May 2003, after the election, T. Hill counseled Watkins for his excessive absences and warned that he could be reduced to part time status if he did not work an 80 hour pay period. On July 1, 2003, Watkins was not able to work because of a slip and fall injury at home. There is no dispute that Watkins did not have a telephone at his apartment. Accordingly he walked to the nearest pay phone, called into work with his remaining coins and told clerk Vicar Ozaki he would not be at work. Ozaki asked Watkins if he wanted Jordan's cell phone number. Watkins told Ozaki he had no more coins, no pen and no paper to write down the number. The following day Watkins reported to work and explained to Jordan why he did not report for work the previous day and why he had not called Jordan at Jordan's cell phone number. Jordan testified at first that he fired Watkins for failing to call in then changed his testimony and said Watkins was fired for excessive absenteeism and tardiness.

It appears that until July 1, 2003, Respondents excused Watkins attendance record. While T. Hill counseled Watkins in May 2003 regarding his attendance, no action was taken against him. Respondents' discharge therefore appears based upon Watkins absence on July 1, 2003, when he called into work albeit not directly to Jordan. While Watkins did not follow the letter of the new call in procedure which I have found violated Section 8(a)(3) of the Act, his explanation for failing to do so was given to Jordan. Jordan chose to seize upon Watkins' failure to call him directly, despite Watkins' inability to do so, as a pretext for further retaliation for Watkins' union activity. I find that Respondents violated Section 8(a)(3) of the Act, as alleged in firing Watkins.

p. Paragraph 7(q)-the July 3, 2003 Joseph Vitek termination

Complaint paragraph 7(q) alleges that Respondents discharged Henderson mechanic Vitek on July 3, 2003.

As discussed in more detail above in Section IV, A, 15, b, Vitek was engaged in union activities that were known to Respondents. As discussed previously, Respondents' animus is well documented. I find CGC has established the requisite elements of an 8(a)(3) violation and the burden shifts to Respondents to establish that they would have discharged Vitek despite his union activity.

Respondents take the position in their post-hearing brief that Vitek was terminated for engaging in workplace violence. The record reflects that on July 2, 2003 Vitek and coworker John Franick engaged in horseplay initiated by Franick. After Franick tossed a large screwdriver in Vitek's direction, Vitek threw a crowbar at a truck Franick was working on.

Jordan tailored his investigation of the events regarding Vitek and Franick so that it appeared Vitek was the aggressor and Franick was afraid to come to work because of Vitek's aggression. Unhappy with the statement employee Howard Calhoun gave because it made Franick appear the aggressor, Jordan told Calhoun to change his statement. Indeed Calhoun told Jordan that it did not appear that Franick was afraid of Vitek since after the July 2, 2003 incident they rode home together. Moreover, in his investigation Jordan never asked Vitek for his side of the story. Respondents' own internal memo reflects that Jordan's investigation reached the wrong conclusions and that Franick not Vitek was the instigator of the incident.

Rather than providing a valid rationale for terminating Vitek, it appears that Jordan's "investigation" was no more than another pretext for terminating a known union supporter. I find that Respondents violated Section 8(a)(3) of the Act in discharging Vitek.

q. Paragraph 7(r), as amended-the July 3, 2003 warnings to Henderson mechanics Russell Grizzle, Michael Kight, James Pagtulingan, Howard Calhoun, Corey Burkett and Theodore Taylor

Complaint paragraph 7(r), as amended, alleges that on July 3, 2003, Respondents issued unwarranted written warnings to Henderson employees Grizzle, Kight, Pagtulingan, Calhoun, Burkett and Taylor.

Grizzle, Kight, Pagtulingan, Calhoun, Burkett and Taylor all engaged in union activities that were well known to Respondents prior to the issuance of the written warnings.

On July 3, 2003, Jordan issued identical written warnings to Grizzle, Kight, Calhoun, Burkett, Taylor and Pagtulingan for poor attendance. Jordan told each employee that they had to call him personally before their shift began if they were going to be absent. The warning stated that failure to contact Jordan personally to report an absence or tardiness, "will be considered a no call no show situation and will subject you to disciplinary action up to and including termination of employment."

Given Respondents well established anti-union hostility, I find CGC has established its prima facie case that the warnings violated Section 8(a)(3) of the Act.

There is no evidence that Grizzle, Kight, Pagtulingan, Calhoun, Burkett and Taylor's attendance records were unusually poor in the month preceding the warnings. Thus, there appears no basis for this discipline. The more likely explanation for these warnings was Respondents' ongoing plans, announced earlier by Mark Shoen and Jordan, to retaliate against known Union adherents.

I find that Respondents violated Section 8(a)(3) of the Act in issuing the warnings to Grizzle, Kight, Pagtulingan, Calhoun, Burkett and Taylor.

r. Paragraph 7(s)-the alleged discharge of Nelson Castro

Complaint paragraph 7(s) alleges that on July 10, 2003, Respondents terminated Henderson mechanic Castro.

As discussed in more detail in section IV, A, 15, c, Castro had union activities well known to Respondents. With these elements together with Respondents' hostility toward its

employees' union activities, CGC has set forth a prima facie case that Respondents discharged Castro in violation of Section 8(a)(3) of the Act.

Respondents contend that Castro was terminated for engaging in a work slowdown.

There is no dispute that on July 7, 2003, when Loyd assigned Castro two "quickie" trucks to repair, Castro told Loyd if he earned Loyd's wages the trucks would be quickies. The record is also clear that Loyd's assessment of the trucks as "quickies" was in error. The repair work orders for both trucks establish that Castro diagnosed additional troubles with each truck after he began work on them. While Loyd claimed that Castro performed no work on the trucks, the repair work orders confirm both that Castro worked on each truck and that the time Castro spent on each truck was appropriate. Further, Castro told Loyd that the second truck needed a rear end assembly and Loyd told Castro to park the truck on the parking lot to await delivery of the rear end. A cursory review of the repair work order for each truck would have revealed to Jordan that Castro not only worked on the truck but also that he had not slowed his work as Jordan claimed. I find Respondents' claim that Castro engaged in a work slowdown is yet another pretext designed to rid themselves of another union supporter. I find Respondents terminated Castro in violation of Section 8(a)(3) of the Act as alleged.

s. Paragraph 7(t)-the termination of Michael Kight

Complaint paragraph 7(t) alleges that Respondents discharged Henderson employee Kight on August 4, 2003.

Kight's union activities, discussed in greater detail above at section IV, A, 16, a, was well known to Respondents. In early March 2003 Jordan interrogated Kight about his union activity and threatened him with discharge if Kight did not cease his union activity. Kight also received a warning on July 3, 2003 that I have found violated Section 8(a)(3) of the Act above in section IV, B, 2, q.

I find CGC has established the elements necessary to find a violation of Section 8(a)(3) of the Act in Kight's discharge. The burden shifts to Respondents to establish they would have fired Kight despite his union activity.

While in their post-hearing brief, Respondents contend that Kight was fired for his poor attendance record, Respondents' personnel records show Kight voluntarily abandoned his job by not calling in to work on August 4, 2003.[137] The events leading to Kight's job abandonment began August 5, 2003 when Kight called Jordan at work to say he was ill, would not be to work and had to go to the doctor.[138] Jordan gave Kight permission to be off. The following day Kight again called Jordan and advised he was still sick.[139] Jordan did not warn Kight he was in danger of losing his job but told Kight there was no work for him and Jordan would call Kight to work if he was needed. Kight continued to call work to ensure he was still employed.

Respondents' own records establish that Kight did not abandon his job but called in, reporting his illness, and Jordan gave him permission to be off work. Jordan seized upon yet another opportunity to discharge a known union supporter when he told Kight there was no work and Jordan would call when Kight was needed. For the first time in their post-hearing brief, Respondents have argued that Kight was fired for his poor attendance record. The evidence

[137] General Counsel's exhibit 155(b).
[138] General Counsel's exhibit 151(w).
[139] General Counsel's exhibit 151(x)

simply does not support this belated defense. I find Respondents fired Kight in violation of Section 8(a)(3) of the Act as alleged.

t. Paragraph 7(u)-the William Farran termination

Complaint paragraph 7(u) alleges that on August 13, 2003, Respondents discharged Henderson mechanic William Farran.

Farran was one of the chief Union activists whose activities were well known to Respondents. Kelly, Fowler and Hill identified Farran as a union leader. Farran was selected as Union steward after the May 7, 2003 election. Farran also received a warning, violative of Section 8(a)(3) of the Act, for presenting an employee petition to Fowler on May 30, 2003. I find CGC has satisfied his burden of establishing prima facie evidence Respondents discharged Farran in violation of Section 8(a)(3) of the Act. The burden shifts to Respondents to establish that they would have fired Faran notwithstanding his union activity.

Respondents contend that Farran was terminated for falsely claiming to have performed engine work.

As discussed above at section IV, A, 16, b, commencing in late July 2003 Farran was assigned to work on a truck with an overheating problem. The record reflects that Farran initially replaced one of the head gaskets with a Victor brand gasket but damaged it when installing the head. This required Farran to replace the Victor gasket with a Fel-Pro brand he obtained from his co-worker Joel King. Farran then replaced both head gaskets with Fel-Pro gaskets. Despite several additional attempts to fix the truck by Farran, according to Jordan and Loyd the truck continued to overheat. Two or three weeks later Jordan had Farran's fellow master mechanic and engine specialist Larry Fuller take the head off the truck Farran had worked on. Fuller was unable to determine if the head gasket had been on the truck for an extended period of time or if Farran had changed the gasket.

On August 13, 2003, Jordan accused Farran of failing to change the head gasket on the truck based on the work order that reflected that Victor not Fel Pro gaskets had been issued for the repair from the parts department. When Farran explained that he received the Fel-Pro gaskets from co-worker King, Jordan changed his tune and alleged that was contrary to company policy. Farran reminded Jordan that Jordan too had used spare parts from the cabinet in Farran's bay.

At the time Jordan terminated Farran there was no evidence that Farran had failed to perform the work he claimed. Master mechanic Fuller told Jordan that he could not determine if the gasket had been recently replaced. Farran's explanation for using a different gasket than the one supplied by the parts department was corroborated by King who testified he gave Farran two Fel Pro gaskets. Jordan had no basis for concluding that Farran had failed to perform the work he claimed. Respondents' belated attempt to construct a defense for Farran's discharge in the form of expert opinion testimony by Paul Pate is rejected. I have previously found at section IV, A, 16, b, Pate's opinion was based upon an erroneous assumption regarding the evidence and I have given Pate's opinion little weight.

I find that Jordan, consistent with his past practice, seized upon a pretext to fire a leading Union activist in violation of Section 8(a)(3) of the Act as alleged.

u. Paragraph 7(v)-the September drug test discharges

Complaint paragraph 7(v) alleges that on September 2, 2003, Respondents conducted mandatory drug testing of Henderson bargaining unit employees resulting in the discharges of bargaining unit employees Rolly Agonoy, Omar Armas, James Augustine, Corey Burkett, John Franick, Russell Grizzle, Tyrell Peterson and Ted Taylor.

CGC argues in their post-hearing brief that the drug testing and discharge of the bargaining unit employees was motivated by anti-union animus. CGC also argues that the drug testing procedures utilized by the lab conducting the testing were invalid. As stated above in section IV, A, 17, I find no probative evidence to support the contention that the drug testing procedures were invalid.

Respondents on the other hand contend that the drug testing was conducted as part of Respondents' extant policy of conducting random mass drug tests, that there was evidence to support Miner's decision to conduct the tests and that it was Respondents' policy to allow the repair facility manager decide who to reinstate from substance abuse leave.

Respondents' drug testing policy authorizes the testing of employees if they have been involved in a work-related injury, if there is reasonable suspicion that employees are using illegal drugs, and for certain high risk employees. The policy also provides for random testing of employees.

There is no dispute that the Henderson testing was not conducted as a random test but that Respondents' UHI Repair Vice President Bob Miner ordered that all Henderson employees be drug tested because he had reasonable suspicion to believe the Henderson employees were using drugs. The facts supporting Miner's opinion consisted of what he characterized as low employee efficiency. Prior to the drug testing, there was no evidence that Respondents knew that a bargaining unit employee used drugs or was under the influence of drugs while at work.

While there is evidence that Respondents have previously conducted random tests of their employees at various facilities throughout the United States, there is no evidence prior to September 2003 that Respondents conducted a mass testing of employees for reasonable suspicion.[140] Moreover, there is no evidence that Respondent has a policy or practice which defines reasonable suspicion.

It must be determined initially whether the testing of Henderson employees was ordered pursuant to Respondents' valid past practice or if the tests were ordered in retaliation for employees' support of the Union.

It has been amply demonstrated that from late February through August 2003, Respondents conducted what can only be described as a virulent anti-union campaign designed to retaliate against its Henderson repair shop employees for attempting to have the Union represent them for the purposes of collective bargaining. Mark Shoen decided to send a message to employees that union activity would not be tolerated at U-Haul. Thereafter employees were threatened with plant closure and termination, work rules were changed and more strictly enforced, and 20 employees were fired as part of Respondents' retaliation against its employees. On about on September 2, 2003, Henderson repair shop parts manager John Georgi told Henderson post inspector Don Collette that management had a list of people to terminate and they would use drugs, efficiency, theft or any other reason to justify the

[140] Respondents' exhibit 100.

terminations. It is in this context that Respondents' motivation for conducting the drug tests must be evaluated.

Respondents claim Miner had reasonable suspicion to conduct the drug tests because of low employee efficiency. However, this justification was Respondents' own creation. Through a hiring freeze, through new work rules prohibiting movement of a vehicle out of work bays until the repairs were complete when parts were unavailable, through inefficient assignments by Loyd, through the unlawful and restrictive work rules imposed by Respondents prohibiting employees from leaving a work bay without permission, and through the termination and failure to replace 20 mechanics, Respondents created inefficiencies and then used those self-inflicted limits to argue that the low employee efficiency was the result of drug use. Moreover, before September 2003 U-Haul conducted only mass random drug testing. The absence of mass employee drug testing for reasonable suspicion anywhere in Respondents' operations in the United States before September 2003 suggests that Miner's suspicion was specious.

Respondents argue that since they did not drug test at the Decatur facility, there was no anti-union animus in conducting the drug tests at the Henderson repair facility. This argument has been rejected by the Board. In *McClain of Georgia, Inc*., 322 NLRB 367, 380 (1996), the Board affirmed the administrative law judge who found that it is irrelevant that some employees who were drug tested were union supporters and others drug tested were not union supporters if the alleged change in policy was an act of retaliation for employee's union activity.

Further evidence of Respondents' unlawful motivation in conducting the September drug tests can be found in Respondents' Substance Abuse Leave of Absence Policy which provides that employees who test positive for illegal drugs are immediately placed on leave and given 30 days to retest. If their retest is negative, they are eligible for reinstatement.

It is Respondents' policy to reinstate employees who successfully pass a second drug screen while on substance abuse leave. Contrary to Respondents' assertion that Jordan and Miner's failure to rehire any of the employees who successfully completed a second test is consistent with Respondents' policy, Respondents' own records reflect that during the period August 2001 to December 2003, 31 of 50 employees who had negative retests during their substance abuse leave were reinstated.[141]

Respondents failed to reinstate employees Peterson and Augustine who successfully retested. Respondents failed to provide employees Armas, Burkett and Taylor an opportunity to retest. The failure to consider employees for reinstatement following a negative retest and the failure to give employees an opportunity to be considered for substance abuse leave shows that the true purpose of the September 2003 drug testing was to fire people in retaliation for union activity.

Last, Respondents argue that none of the employees who tested positive are entitled under Section 10(c) of the Act to reinstatement. Respondents cite *Anheuser-Busch, Inc*., 342 NLRB No. 49 (2004), in support of their argument. In *Anheuser-Busch*, the Board affirmed that under Section 10(c) of the Act a discharged employee cannot be reinstated where they were fired for cause if there is insufficient nexus between the unfair labor practice and the reasons for the discharge.

[141] Respondents' exhibit 102.

I find *Anheuser-Busch* inapposite to the facts of this case. Unlike *Anheuser-Busch*, here there is a nexus between the unfair labor practice and the reasons for the discharge. Respondents here conducted the tests in order to retaliate against employees. To the contrary, in *Anheuser-Busch* the unilateral change in terms and conditions of employment did not create the grounds for termination.

I find that Respondents conducted the September 2003 drug testing at Henderson in retaliation for its employees union activities and thus violated Section 8(a)(3) of the Act.

v. Paragraph 7(w) and 7(x)-the September 5 2003 allegations regarding more strictly enforcing efficiency standards and the discharges of Henderson mechanics Howard Calhoun, Abel Carreno, Antonio Herrera and Elmer Tanglao

Complaint paragraph 7(x) alleges that on September 5, 2003 Respondents more strictly enforced efficiency standards with respect to bargaining unit employees.

Complaint paragraph 7(w) alleges that on September 5, 2003 Respondents discharged Henderson employees, Calhoun, Carreno, Herrera and Tanglao.

CGC contends that Respondents began more strictly enforcing their efficiency standards on about September 5, 2003 and on that same date discharged Calhoun, Carreno, Herrera and Tanglao pursuant to those standards.

Calhoun, Carreno, Herrera and Tanglao all had union activities known to Respondents and when coupled with Respondents' hostility to its employees' union activities establishes each element of a violation of Section 8(a)(3) of the Act.

Respondents argue that the discharges of Calhoun, Carreno, Herrera and Tanglao were done to enforce extant efficiency standards in order to remedy inefficiencies in its Henderson key city shop.

It is revealing to compare the efficiency ratings of Calhoun, Carreno, Herrera and Tanglao with their team leaders and other Henderson and Decatur employees who were not known union supporters. The efficiency ratings for Calhoun, Carreno, Herrera and Tanglao for the period October 2002 to August 2003 are as follows:

Calhoun		Carreno	Herrera	Tanglao
10/02	0%	125%	46%	0%
11/02	0%	71.3%	45%	0%
12/02	0%	90%	72%	81%
1/03	30%	122.6%	89%	113%
2/03	67%	116%	92%	86%
3/03	53%	70.7%	90%	72%
4/03	65%	68.5%	99%	53%

5/03	57%	56.2%	89.5%	49%
6/03	41%	49.2%	59%	35%
7/03	39%	49.2%	50%	23%
8/03	43%	54.4%	63%	42.9%

Rance Pledger and Gary Jacobs were team leaders on the PM side of the Henderson repair shop. There is no evidence that they supported the Union or engaged in any union activity. Their efficiency ratings for the period November 2002 through December 2003 were:

	Jacobs	Pledger
11/02	59.6%	0%
12/02	59.6%	113%
1/03	86%	44%
2/03	99.9%	62%
3/03	68%	73%
4/03	57.7%	60.7%
5/03	48%	58%
6/03	31%	47%
7/03	27%	48%
8/03	41%	61%
9/03	63%	60%

Pledger and Jacobs were neither warned nor discharged for low efficiency.

Henderson mechanic Peter Morris was interrogated by UHN President Hogan before he was hired in July 2003. Hogan asked Morris what he thought of Unions and Morris told Hogan he did not like them. Henderson transfer drivers Gene Akin and Linda McKeehan both told UHI Vice President of Human Resources Kelly that they were opposed to the Union before May 7, 2003. Their efficiency ratings for the period December 2002 to December 2003 were:

Morris	Akin	McKeehan
10/02	59%	0%
11/02	114%	0%
12/02	101%	84%

1/03		130%	127%
2/03		120%	117%
3/03		113%	119%
4/03		97%	100%
5/03		92%	91%
6/03		58%	71%
7/03	0%	38%	38%
8/03	0%	53%	52%
9/03	0%	16.8%	19.9%
10/03	0%	24.7%	24%
11/03	0%	6%	6%
12/03	0%	3.4%	3.8%

Morris, Akin and McKeehan were never warned about their low efficiency ratings and were not terminated for low efficiency. Contrary to Respondents' assertion in their post-hearing brief, Calhoun, Carreno, Herrera and Tanglao received no warnings about their individual efficiency ratings before they were terminated.

These efficiency ratings reflect that Calhoun, Carreno, Herrera and Tanglao had efficiency numbers generally better than those of Pledger and Jacobs and better than Morris, Akins and McKeehan after July 2003.

Henderson parts manager Georgi's admission that Respondents would justify the termination of employees by using efficiency ratings together with the disparate treatment of the known union supporters when compared with those opposed to the Union or with no union activity establishes that the selective enforcement of the efficiency standards was a pretext to retaliate against employees who supported the Union.

I find that Respondents in more strictly and discriminatorily enforcing its efficiency standards and in terminating Calhoun, Carreno, Herrera and Tanglao violated Section 8(a)(3) of the Act as alleged.

w. Paragraph 7(y)-the discharge of Francisco Sandoval

Complaint paragraph 7(y) alleges that on September 19, 2003 Respondents terminated Henderson mechanic Sandoval by changing his status to that of a new employee upon his return from medical leave.

F. Sandoval engaged in union activities that were known to Respondents. On June 16, 2003 Sandoval was injured at work and was off work on medical leave until July 8, 2003. After his return to work, Sandoval discovered that his hire date of

January 13, 2003 had been changed to July 8, 2003, effectively requiring him to renew his acquisition of the required six months of employment necessary to be eligible for health and vacation benefits. In addition Sandoval's job classification had been changed from brake/tire specialist to PM inspection specialist, a lower pay classification. When Sandoval complained to Respondents' management about the change in his hire date and pay scale, he was told nothing could be done. Toward the end of August 2003, Jordan told Sandoval that he could not give Sandoval a raise "due to the union activities that were going on" and that everything was in a freeze. Sandoval quit on September 19, 2003 because he could not get benefits or a pay raise.

CGC argues that Respondent constructively discharged F. Sandoval by imposing onerous working conditions in order to compel him to quit.

In order to establish that an employer has constructively discharged an employee, General Counsel must show that the burden imposed on the employee must cause and be intended to cause a change in working conditions so difficult or unpleasant as to force the employee to resign and that the burden is placed by the employer due to the employee's union activity. *Convergence Communications, Inc.,* 339 NLRB 408 (2003). The imposition of disparately enforced production quotas has been found sufficient to cause a constructive discharge. *Bolivar Tee's Manufacturing,* 334 NLRB 1145 (2001).

Respondents were aware of F. Sandoval's union activity as he signed several employee petitions that were submitted to management. Jordan admitted that he was not giving Sandoval a raise or correcting his hire date because the union activity in the Henderson shop had put everything in a freeze.

In Sandoval's case Respondents assigned Sandoval a new start date and reclassified him to a lower paying job position. Sandoval was thus reduced in pay and did not qualify for vacation and medical benefits. Respondents refused to grant Sandoval a wage increase to compensate for his lack of benefits and his lower pay scale. Dissatisfied with lowered pay and benefits Sandoval resigned. Like the imposition of disparately enforced production quotas, forcing Sandoval to re-qualify for vacation and medical benefits and reducing him in pay grade imposed more onerous terms and conditions of employment upon Sandoval. The nexus between union activities and the imposition of the onerous conditions has been established by Jordan's comments noted above. I find that in imposing more onerous terms and conditions of employment in retaliation for his union activities Respondents terminated F. Sandoval in violation of Section 8(a)(3) of the Act.

x. Paragraph 7(z)- the discharge of Joel King

Complaint paragraph 7(z) alleges that Respondents discharged Henderson mechanic King on October 2, 2003.

Henderson mechanic King was engaged in union activities known to Respondents including signing and presenting employee petitions to management and acting as Union safety coordinator. King received an unlawful warning for presenting an employee petition to Fowler. A week before his discharge Jordan told fellow Henderson employee Pagtulingan that King had thrown himself under a bus for reporting safety violations to the Nevada Occupational Safety and Health Enforcement Section.

I find that CGC has established prima facie evidence that Respondents terminated King in violation of Section 8(a)(3) of the Act.

Respondents contend that they would have terminated King notwithstanding his union activities because he violated safety standards on four occasions.

King admitted that he was told to use jack stands at least twice by Miner. However, there is no dispute that it was the last incident regarding jack stands on October 2, 2003 that led to King's discharge. In replacing a fender well on the front of a truck, King had slightly lifted the truck frame but the wheels were not off the ground.[142] Miner told King to use a jack stand but King told Miner since the truck's wheels were not off the ground a jack stand was not necessary. Both King and Fuller stated there was no safety concern because only the truck suspension was lifted and the truck itself was not off the ground. Moreover, King was never under the truck but replaced the fender well from above. It was not until the day after King was fired that a notice was posted by Jordan at the Henderson repair shop requiring the use of jack stands when lifting U-Haul equipment.

The only evidence dealing with when Respondents required the use of jack stands is contained in a memo dated October 29, 2003 from UHI Human Resources employee Joey Minyard to UHI vice president of Human Resources Henry Kelly dealing with King's termination.[143] Minyard cites Respondents' PM work orders that require use of jack stands when trucks' wheels are lifted off the ground to remove the wheels.

Based on the testimony of King and Fuller whose testimony was corroborated by Minyard's memo, it appears that the only time jack stands were necessary was when a truck's wheels were lifted off the ground, creating a safety hazard. Since King had not lifted the truck's wheels off the ground and was not working under the truck, there was no hazard created and no need for jack stands. King's termination for failure to use the jack stands was thus a pretext to terminate yet another union supporter.

I find Respondents violated Section 8(a)(3) of the Act in discharging King.

y. Paragraph 7(aa)-the discharge of Apollos Bisco

Complaint paragraph 7(aa) alleges that on October 2, 2003 Respondents discharged Henderson MRU mechanic Bisco.

Like many other Henderson employees, Bisco had union activity known to Respondents in the form of signing employee petitions. CGC argues that Respondents constructively discharged Bisco by forcing him to choose vacation pay or Family Medical Leave. Counsel for Respondents contend that Bisco is incredible because he quit without exploring medical leave, because he said he wanted his resignation to stay the way it was and because there is no nexus between Jordan's conduct and any union activity.

It is clear that Bisco initiated his voluntary resignation. When Jordan told Bisco if he quit he could not receive his vacation pay since Bisco was a few days short of his anniversary date, Bisco continued with his resignation by signing the resignation form and removing his tools. However, the next day Bisco's situation changed as he learned from UHI in Phoenix that he had been approved for Family Leave. That evening Bisco spoke to Jordan on the phone. Jordan told Bisco, "If you go on medical leave you're not going to receive your vacation pay. But if you

[142] Jordan testified he could not tell if the wheels were off the ground. Both King and coworker Fuller testified the wheels were on the ground. I credit the testimony of King and Fuller.

[143] General Counsel's exhibit 431.

decide to quit and resign I have the authority to give you your vacation pay." Jordan then gave Bisco the rest of the week to decide. The following Friday Bisco told Jordan he was going to resign so he could get his vacation pay. Bisco testified he would have taken Family Medical Leave if Jordan had not told him he would lose his vacation pay unless he quit.

The question is did Jordan's conditioning of vacation pay on Bisco's resignation constitute a constructive discharge of Bisco? As noted above, an employer constructively discharges an employee when due to an employee's union activity it imposes a burden on the employee that causes a change in working conditions so difficult or unpleasant as to force the employee to resign. *Convergence Communications, Inc.,* 339 NLRB 408 (2003).

While Jordan conditioned receipt of vacation pay on Bisco's resignation, neither Jordan nor anyone at UHI refused to grant Bisco Family Medical Leave. It was Bisco's choice to resign rather than accept Family Medical Leave which would have preserved his status as an employee. While Jordan's offer of vacation pay was an incentive for Bisco to resign, ultimately the choice to remain an employee or to quit was Bisco's. I do not find the offer of vacation pay to be an onerous change to Bisco's working conditions that caused him to resign. Bisco chose the vacation money over remaining an employee under no different working conditions than he had experienced before he resigned. I will dismiss this portion of the complaint.

z. Paragraph 7(bb)-the discharge of Don Collette

Complaint paragraph 7(bb) alleges that on October 2, 2003 Respondents terminated Henderson mechanic Collette.

Collette was identified by Respondents' management as a leader of the Union. Collette's well known union activity included testifying for the Union at the objections hearing. About on September 2, 2003, three weeks before Collette's termination, Henderson repair shop parts manager John Georgi told Collette that management had a list of people to terminate and they would use drugs, efficiency, theft or any other reason to justify the terminations.

I find that CGC has established the necessary elements of an 8(a)(3) violation in Collette's case. The burden shifts to Respondents to establish they would have terminated Collette despite his union activity.

Respondents contend Collette was discharged for allowing unsafe vehicles back into the rental fleet. Respondents' defense is based on the discredited testimony of Miner and Loyd who claim Collette allowed unsafe trucks back into the rental fleet. Contrary to their testimony, I have credited Collette who testified that neither of the trucks test driven on October 3, 2003 had a significant steering problem, that he had rejected and sent the truck back for steering repair and that Jordan had signed off on the further repair. Rather, consistent with Georgi's prediction, Respondents had a list of people to terminate, undoubtedly among them those they had identified as union leaders, and were looking for any excuse to fire them. Respondents' reason for terminating Collette is pretextual and rejected.

I find Respondents terminated Collette in violation of Section 8(a)(3) of the Act.

aa. Paragraph 7(cc) and 7(dd) and 7(ff)-the allegations regarding the more stringently enforced efficiency standards and the discharges of Henderson mechanics Albert Banico, Robert Essig, Jesse Gilson, Glenn Lingao and Jimmy Pagtulingan.

Complaint paragraph 7(dd) alleges that on December 9 and 10, 2003, Respondents more stringently enforced efficiency standards with respect to bargaining unit employees. complaint paragraph 7(cc) alleges that on December 9, 2003 Respondents terminated Henderson mechanics Banico, Essig, Gilson, and Lingao. Paragraph 7(ff) alleges that on December 10, 2003 Respondents discharged Henderson mechanic Pagtulingan.

Each of the employees named in paragraphs 7(cc) and 7(ee) had significant union activities known to Respondents. Each signed an authorization card and several employee petitions. Banico received an unlawful warning for attending a meeting with coworker Farran where Union matters were discussed. In April Essig was interrogated about his union activities by T. Hill and Essig told Hill the Union would cost him money. Gilson wore union insignia at work until July 2003. Given the general hostility demonstrated by Respondents toward its employees' union activities and Georgi's September 2003 statement to Collette that Respondents would use any means including efficiency to terminate its list of employees, I find CGC has established the requisite elements of an 8(a)(3) violation in the cases of Banico, Essig, Gilson, Lingao and Pagtulingan. Under Wright Line the burden shifts to Respondents to establish they would have terminated these employees notwithstanding their union activity.

Respondents contend that they terminated Banico because of his consistently low efficiency. Banico's low efficiency existed virtually from the time he became a drivability specialist at Henderson in September 2002. Despite efficiency ratings consistently below 50%, Banico never received a warning concerning his efficiency. To the contrary, UHI Repair Vice President Fowler told Banico not to worry about low efficiency because of his position as a drivability specialist. Former Henderson repair shop manager T. Hill also agreed that drivability specialists did not have to maintain a high efficiency. Respondents' own managers have established that Banico's job classification did not have to maintain a high rate of efficiency. These admissions establish the pretextual nature of Respondents' defense that Banico was fired for low efficiency. I reject this defense and find that Respondents' termination of Banico violated Section 8(a)(3) of the Act.

Respondents take the position that they terminated Essig because his position was eliminated when Respondents closed the Henderson facility. The personnel record documenting Essig's termination states, "PERMANENT LAYOFF-NO REASONABLE EXPECTATION OF BEING REHIRED."

A plant closing and the accompanying terminations constitute violations of Section 8(a)(3) of the Act where the closing and terminations are motivated by anti-union animus. *Del Champs, Inc*., 330 NRLB 1310 (2000). Here it has been established below in section (dd) that the closing of the Henderson repair facility was motivated by anti-union animus. Essig was a "permanent layoff" with "no reasonable expectation of being rehired" because he was a known union supporter and because the Respondents eliminated his position as part of their plan to close the Henderson repair facility in retaliation for their employees' union activity. This discharge violated Section 8(a)(3) of the Act.

Respondents argue that Gilson was terminated for his poor efficiency. Gilson's efficiency ratings were 60.4% in March 2003, 119.6% in April, 62.7% in May, 82.2% in June, 55.8% in July, 79.2% in August, no efficiency ratings for September and October, and 37.3% for November. Gilson's efficiency ratings from June to November were generally better

than those of team leaders Pledger and Jacobs and better than employees known to oppose the Union including Akins, McKeehan and Morris all of whom were not terminated for low efficiency.

I reject Respondents' defense that Gilson was fired for low efficiency rather than for his union activity given the disparate treatment given to employees who did not support the Union whose efficiency was worse than Gilson's. I find Respondents violated Section 8(a)(3) of the Act in terminating Gilson.

Respondents argue in their post-hearing brief that they terminated Lingao for low efficiency.

In early November 2003 Lingao had a conversation with Jordan regarding Lingao's efficiency. Jordan warned Lingao that his efficiency was low. On December 9, 2003, Miner told Lingao he was fired because of low efficiency. Lingao's efficiency ratings were 73.9% for October 2002, 89.9% for November 2002, 83.6% for December 2002, 91.8% for January 2003, 98.7% for February, 96.5% for March, 108.4% for April, 94.6% for May, 62.9% for June, 58.8% for July, 55.1% for August, no rating for September and October, and 43.8% for November. When these efficiency ratings are compared with those of Pledger, Jacobs, Akins, McKeehan and Morris who were not warned or discharged for low efficiency, one can only conclude that Respondents' true reason for discharging Lingao was retaliation for his union activity pursuant to Mark Shoen's statement on March 7, 2003 to send a message that union activities would not be tolerated. Shoen's policy was reinforced by Jordan's May 8, 2003 prediction of harsher working conditions because the Union won the election and parts manager Georgi's September 2, 2003 pronouncement that Respondents would use any means to fire their list of employees, including efficiency. I reject Respondents' defense that it fired Lingao due to his low efficiency and conclude that he was fired in violation of Section 8(a)(3) of the Act.

Finally, Respondents say they fired Pagtulingan because of his low efficiency.

Pagtulingan's efficiency ratings were 4.5% for October 2002, 30.7% for November 2002, 43.4% for December 2002, 70% for January 2003, 42.2% for February, 63% for March, 56.5% for April, 79% for May, 56.2% for June, 11.4% for July, 39.7% for August, September and October ratings are absent and November 78.4%.

Pagtulingan moved to Henderson in September 2002 and became a pre inspection specialist. Before the May 7, 2003 election, Henderson shop manager T. Hill told Pagtulingan he did not have to worry about his efficiency rating because his duties as pre inspector made it difficult to maintain high efficiency. In late September 2003, Jordan assured Pagtulingan he did not have to worry about his efficiency since he was a support guy with fluctuating efficiency. Fowler also acknowledged that the pre inspector did not have to maintain high efficiency.

Respondents' defense has been refuted by their own managers. They repeatedly assured Pagtulingan, as recently as September 2003, that he did not have to worry about his efficiency ratings and then changed their story in December 2003 and fired him for low efficiency. This defense is nothing but pretext designed to mask Respondents' true motivation in firing Patulingan, retaliation for his support for the Union. I find that Respondents violated Section 8(a)(3) of the Act in terminating Pagtulingan.

Further, in terminating the above employees, Respondents more stringently applied their efficiency rules against known union supporters than against those who opposed the Union or had no union activity. See the discussion of disparate application of efficiency ratings in section

IV, B, 2, u above. By more strictly applying the efficiency rules Respondents violated Section 8(a)(3) of the Act as alleged in paragraph 7(dd) of the 5th complaint.

bb. Paragraph 7(ee)-the written warning issued to Larry Fuller

Complaint paragraph 7(ee) alleges that on December 9, 2003, Respondents issued a written warning to Henderson mechanic Fuller.

Fuller engaged in union activities that were known to Respondents including signing a union authorization card and six employee petitions.

On December 9, 2003, shortly after firing employees for low efficiency, Miner and Jordan conducted a meeting with 12 to 15 employees present. Miner told the employees that the Henderson repair shop was losing money, that U-Haul couldn't put up with any more losses and that they should stop what they were doing, pack up and be ready to move to the Decatur facility by December 15, 2003. After the meeting, Fuller was speaking to two employees and said it was not fair, that employees with no or low efficiency should have been fired first. Miner and Jordan were a few feet away. About an hour later, Jordan came to Fuller's work bay and said you shouldn't have been talking about company business. Stay in your bay and do your work. He gave Fuller a written warning. The warning reads:

> On December 9, 2003, Larry Fuller made inappropriate comments following the sequence of events that occurred previously which were business related. This notice is to inform you that this type of behavior will not be accepted or tolerated. We expect from you to perform the task at hand, do business as usual, and stay within the confines of your work area unless otherwise specified by a supervisor.

Fuller had never before been disciplined. Fuller was clearly engaged in Union and protected concerted activity in discussing working conditions with other employees on December 9, 2003 when he discussed the terminations of fellow employees. Respondents' warning of Fuller violated both Section 8(a)(1) and (3) of the Act in that he was being disciplined for engaging in Union and protected activity at the time he was discussing working conditions. Moreover, the discipline also violated Section 8(a)(1) of the Act as the enforcement of a previously found unlawful change in working conditions.

cc. Paragraph 7(gg)-the closure of the Henderson repair shop

Complaint paragraph 7(gg) alleges that on December 15, 2003 Respondents closed the Henderson repair shop.

It is undisputed that Respondents closed the Henderson shop and transferred the remaining employees to the Decatur facility on December 15, 2003. CGC argues that the closure of the Henderson repair facility was the culmination of a plan Respondents instituted in March 2003 with the inception of Union organizing in order to defeat the union activities of its employees. Respondents counter that its Henderson repair facility was closed because of economic factors, citing employee inefficiency, operating loses and the inability to produce sufficient trucks for the rental fleet.

The overwhelming weight of the evidence suggests that Respondents harbored anti-union animus against its employees' union activities. Respondents' actions in this case must be

measured against the backdrop of the U-Haul philosophy concerning Unions as set forth in a U-Haul management training program:[144]

> Things are complex enough as they are. Let's realize the chaos that unionization would create. Have you ever seen a two-headed animal? Most don't survive more than a few hours and none ever function effectively. A two-headed organism is a monster in the social as well as the animal world. Unions create monsters and when we think, we all realize this.
>
> U-Haul Policy Bulletin 261
> January 27, 1983

Late in February 2003 when Respondents' discovered the union activities of Henderson bargaining unit employees, threats of terminations and plant closure commenced. UHN President Lanza predicted that trouble was coming because it was well known how U-Haul reacted towards Unions. Immediately UHI took over the Henderson repair facility by sending in Human Resources Vice President Kelly and Repair Vice Presidents Fowler and later Miner to act as shop managers. On March 7, 2003, a plan of action was formulated together with the highest officials of UHI, Mark Shoen and Ronald Frank. Mark Shoen's plan was to "Terminate people. Get them off the payroll today. I want to set an example to other employees. . . . Send a message to the employees that union activity won't be tolerated."

Respondents then began sending its message to employees by unlawfully firing mechanics Garcia, Campos, De Guzman and Jacobo on March 7, 2003 and mechanic Mark Nance on April 22, 2003. Apparently, employees did not get Mark Shoen's message as they continued to engage in union activities throughout March, April and May 2003 by distributing, signing and submitting to management employee petitions concerning working conditions and by selecting the Union as their collective bargaining representative on May 7, 2003.

The following day, May 8, 2003, Henderson repair shop supervisor Michael Jordan announced the unlawful imposition of new and more onerous work rules in retaliation for employees' selection of the Union.

The illegal terminations continued with the discharge of seven Henderson mechanics and two experienced supervisors, Henderson shop manager T. Hill and shop supervisor S. Hill, in May 2003.

Six additional discriminatory terminations of Henderson mechanics occurred in June, July and August 2003.

On September 2, 2003, Henderson parts manager Georgi reiterated Respondents' plan to discharge Union advocates by saying that U-Haul had a list of employees to terminate and they would use drugs, efficiency, theft or any other reason to justify the terminations.

Following Georgi's prediction, Respondents conducted unlawful drug tests and on September 3 and 4, 2003, discriminatorily discharged another eight Henderson mechanics who failed drug tests and were not given an opportunity to be reinstated under Respondents' substance abuse policy.

[144] General Counsel's exhibit 426(ii).

Georgi's warning came true again on September 5, 2003 when Respondents unlawfully discharged four employees for low efficiency. In October 2003 Respondents continued to eliminate union supporters when three more mechanics were illegally discharged. Finally, just before Respondents closed the Henderson repair shop, five more employees were discriminatorily terminated for low efficiency.

By December 15, 2003, the bargaining unit had been so decimated by Respondents' terminations that it was closed and the handful of remaining employees were reassigned to the Decatur repair shop.

I find that CGC has established prima facie evidence that Respondents closed the Henderson repair shop in retaliation for bargaining unit employees' union activities. The burden shifts to Respondents to show that the Henderson shop would have been closed despite the employees' union activity.

It is Respondents' position that the Henderson repair shop was closed because of an inability to produce sufficient trucks for the rental fleet due to employee inefficiency and because the Henderson shop was losing money.

In March 2003, the Henderson repair shop was still not at full employment. Shop manager T. Hill estimated that an additional 20 mechanics were needed to come to full strength. In March 2003, the Henderson shop was not only operating under budget, it was meeting its quota of trucks to return to the rental fleet. However, beginning March 7, 2003, Respondents began reducing the Henderson bargaining unit work force without replacing employees a result of the hiring freeze imposed by UHI Vice President of Human Resources Kelly. Moreover, at the same time Respondents began to reduce the size of the supervisory staff from three to one with the terminations of shop manager T. Hill and heavy mechanic supervisor S. Hill. They were not replaced.

In addition after March 2003 Respondents began to subcontract bargaining unit work at nearly twice the rate of the period from September 2002 to March 3, 2003 when the union activity was discovered. In May UHI Repair Vice President Fowler began soliciting new subcontractors to perform bargaining unit work.

New work rules led to further inefficiencies when in August 2003, Miner ordered that employees could no longer remove a truck from their work bays until all of the work was completed, even if the repairs could not be completed due to lack of parts.

Lack of parts was also a problem in the period both before and after March 2003 because UHI was not paying parts suppliers' bills. According to UHI Manager of Repair Audit Newton, lack of parts continued to be a problem after May 2003. Mechanics testified credibly that they could not perform necessary repairs due to lack of parts.

Respondents' Henderson repair shop employees did not create the inefficiencies that led to the inability to produce sufficient trucks for the rental fleet. Rather, the inefficiencies were created by Respondents as a pretext to close the Henderson shop and included: an inadequate work force caused by a hiring freeze, the systematic termination of 39 of 90 original bargaining unit employees, leaving Respondents with 40 bargaining unit employees as of November 1, 2003,[145] 70 employees short of a full complement of employees; restrictive work rules that precluded bargaining unit employees from leaving their work bays to get parts or tools and from

[145] General Counsel's exhibit 129(nn)-(pp).

removing trucks from work bays and; subcontracting of unit work to more costly outside vendors. It is not surprising that the Henderson repair shop was not efficient and could not meet its quotas.

Respondents argue that the decision to close the Henderson shop was not made until a valiant effort was made to turn the shop around. This contention seems belied by Respondents' own testimony and internal memos.

The first suggestion that Respondents intended to close the Henderson repair shop was at a meeting between Mark Shoen and Dennis O'Connor (O'Connor), UHI Manager of Storage Operations, on about May 27, 2003, less than nine months after Henderson had opened and less than three weeks after the Union had won the election. Mark Shoen told O'Connor, "We have an unproductive shop which is not performing where we want it to perform. . . ." Shoen said he was looking for a better use for the property and asked O'Connor "to see how self-storage would pencil out."

In late July or early August UHI Repair Vice President Miner asked Coffee to put together data on the Henderson repair shop. This request resulted in Coffee's August 13, 2003 memo.[146] Coffee analyzed data concerning the Henderson shop's performance, and recommended that it lose key city status, that it be closed, that Decatur be retained for PM 5 maintenance and that outside vendors perform maintenance and repair in the Las Vegas area. Coffee acknowledged he did not take into account the number of employees that had been fired at the time he made his analysis nor was he able to explain how he determined it was cheaper to use outside vendors rather than Henderson employees.

It is clear there was no effort to make Henderson profitable, rather from as early as May 2003, Respondents initiated efforts to commence closing the Henderson repair shop.

Respondents contend that Henderson was an unprofitable shop that had to be closed.

Both Respondents' Profit and Loss Statements and the testimony of UHI Director of Repair Analysis and Support Thomas Coffee reflect that Henderson was budgeted to operate at a loss through December 2003. For the period September 2002 to March 2003, UHI had budgeted the Henderson repair shop to operate at a $178,885 loss. During that same period the Henderson repair shop ran actual losses of $238, 967.

On June 26, 2003, Coffee sent a memo to UHI Repair Audit Manager Bill Newton, entitled Updates on Mark's Shops. Mark refers to Mark Shoen. The memo discusses the performance of several key city shops, including Henderson. This was the first memo of its kind Newton or Miner had ever seen. Newton testified he had not requested the memo. The memo reflected several key city shops, including Dallas, Texas, Hyattsville, Maryland, Boston, Massachusetts and Nashville, Tennessee, performing worse than the Henderson repair shop in several measured areas, including profit and loss. These shops were not closed.

Counsel for Respondent UHI refused to provide Profit and Loss Statements pursuant to subpoena for key city shops in Dallas, Hyattsville, Boston, and Nashville, similarly situated to the Henderson shop. Having ruled UHI and the marketing companies are a single integrated enterprise, I find that UHI had the ability and authority to produce these statements. I found that the subpoenaed documents are relevant to the issues in this case and ordered the documents produced. At the hearing, upon Counsel for UHI's refusal to produce the documents, CGC

[146] General Counsel's exhibit 395(a) and ((b).

asked the administrative law judge for an adverse inference. I have found that had the profit and loss statements been produced they would have shown that the key city shops had the same or similar loses as the Henderson repair shop.

In sum, I reject Respondents' defenses, finding that they created the circumstances leading to low efficiency and productivity at the Henderson repair shop and that Henderson's profitability was no worse than other key city repair shops that have remained open.

I find that in closing the Henderson repair shop, Respondents violated Section 8(a)(3) of the Act.

dd. May 28, 2004 complaint paragraphs 7(a) through 7(e)-the allegations regarding the discharges of Decatur employees Norm Snyder, Shawn Saunders, Linda McKeehan and Gene Akin.

Complaint subparagraph 7(a) alleges that on February 10, 2004 Respondents discharged Decatur repair shop mechanic Snyder.

Respondents were aware of Snyder's union activities that included signing six employee petitions. Given the plethora of anti Union animus Respondents have demonstrated, I find CGC has set forth a prima facie case of discrimination in violation of Section 8(a)(3) of the Act.

Respondents contend that Snyder was terminated according to its long standing drug abuse policy. In this regard, Snyder cut his finger at work on February 10, 2004. On February 11, 2004, Snyder's supervisor at the Decatur facility, Alan Bloomberg saw the cut and told Snyder a doctor needed to look at it. Snyder had the cut checked by a physician and since he was injured at work, according to U-Haul policy, Snyder was required to submit to a drug test. The test was positive for amphetamine so the following Monday Jordan put Snyder on substance abuse leave. Snyder was to come to work the following day to fill out the substance abuse paperwork. Snyder reported to work as ordered but Jordan did not give him the forms. A week later, Snyder spoke to Jordan and asked if he still had a job. Jordan said he could not let Snyder work at U-Haul.

Like the Henderson employees who failed the September 2003 tests, Respondents did not give Snyder the opportunity to apply for or receive reinstatement from substance abuse leave unlike many other U-Haul employees at other locations throughout the United States. The difference between Snyder and those employees who were returned to work from substance abuse leave was Snyder's union activity. I find that Respondents had another opportunity to terminate a known union supporter and did not fail to relieve themselves of one. I find Snyder was discharged in violation of Section 8(a)(3) of the Act.

Complaint subparagraphs 7(b) and (c) allege that on February 11, 2004 Respondents discharged Decatur repair shop mechanic Saunders by requiring him to perform work normally done by two employees.

Saunders had substantial union activity that was known to Respondents. CGC contends that Respondents constructively discharged Saunders by increasing his work load until he quit. Saunders testified credibly that he was unable to fulfill his ever increasing work load at the Decatur repair facility. When Saunders returned to Decatur he had no assistant and was unable to keep up with the volume of work. While at the Henderson repair facility, Saunders had fellow employee Jesse Gilson assist him perform brake work.

On February 11, 2004, Saunders had a conversation with Decatur supervisor Bloomberg. Bloomberg told Saunders he was not putting out enough work and his area was too dirty. Bloomberg said, "Shit rolled down hill . . . and he didn't want to hear anything else about it again or he was going to put it in writing." Bloomberg added that Saunders could not leave his work area without Bloomberg's permission. Saunders's job required him to leave his work area to wash batteries and obtain tires.

The additional burdens and restrictions Bloomberg imposed on Saunders proved so difficult and unpleasant that it caused Saunders to resign. It is clear that the order to impose these onerous conditions came from management levels above Bloomberg. There was no plausible explanation for imposing the added burden, other than Saunders's union activity, since there was a surfeit of work and no one available to replace Saunders. I find that Respondents caused the constructive discharge of Saunders due to his union activity in violation of Section 8(a)(3) of the Act. *Convergence Communications, Inc*., 339 NLRB No. 56 (2003).

Complaint subparagraph 7(d) alleges that on March 12, 2004 Respondents laid off Decatur repair shop transfer drivers Linda McKeehan and Gene Akin.

Neither McKeehan nor Akin engaged in any union activity. In fact both employees told UHI Vice President for Human Relations Kelly that they opposed the Union. CGC seems to argue that the unilateral elimination of a bargaining unit position, which may be a violation of Section 8(a)(5) of the Act is so destructive that it requires a finding that Section 8(a)(3) of the Act was committed. I do not find this reasoning persuasive. No case is cited by CGC for the proposition that an 8(a)(5) unilateral change turns the elimination of a bargaining unit position into an 8(a)(3) violation. Surely if there has been a unilateral elimination of a job from the bargaining unit, an 8(a)(5) reinstatement would be sufficient to remedy the harm. More importantly, I find CGC has failed to establish a prima facie violation of Section 8(a)(3) of the Act in the case of either Akin or McKeehan. There is no evidence of union activity nor is there evidence Respondents were under the impression that Akin or McKeehan engaged in union activity. I will dismiss these allegations of the May 28, 2004 complaint.

ee. The December 29, 2004 complaint paragraphs 7(a)-(c)-the allegations regarding the September 2004 Refusal to Promote Michael Siefert.

Paragraphs 7(a)-(c) of the December 29, 2004 complaint allege that Respondents refused to promote Siefert to the position of Area Field Manager because he engaged in union and other concerted activity and because he testified at the unfair labor practice hearing in cases 28-CA-18575 et. al.

The record herein reflects that the position of Area Field Manager (AFM) recruits, trains and manages independent dealers who rent U-Haul products.[147] There is no evidence that the AFM has any of the indicia of supervisory status including the authority to hire, fire, promote, or assign employees or effectively recommend such actions. Likewise there is no evidence that the AFM formulates or effectuates Respondents' policy or has authority to pledge Respondents' credit. I conclude that the position of AFM is neither excluded from statutory protection as a

[147] General Counsel's exhibit 522.

supervisor[148] nor as a managerial employee. *Long Beach Press Telegram*, 305 NLRB 412 (1991); *Sampson Steel And Supply, Inc.,* 289 NLRB 481 (1988).

It is undisputed that Siefert engaged in both union and protected concerted activities that were well known to Respondents. Thus Siefert signed an authorization card and was called as a witness for General Counsel on June 2, 2004 to give testimony adverse to Respondents and again on June 4, 2004 to provide testimony concerning an alleged violation of the sequestration order herein by Michael Jordan. Respondents' anti-union animus has been well established and Hogan stated that the reason Siefert was not promoted to the vacant AFM position was due to the "whole court thing." I find that CGC has established prima facie evidence that Respondents refused to promote Siefert in violation of Section 8(a)(3) and (4) of the Act.

Hogan claimed that he only considered Siefert for the AFM position for "30 seconds" because Siefert was not qualified for the position due to his poor work performance, falsification of company records, poor attendance and poor appearance because he chewed tobacco. The record is devoid of any evidence that Siefert falsified company records, had poor work performance or poor attendance. The falsity of these explanations for failing to promote Siefert is underscored by the fact that Hayes gave Siefert pay raises in August and October 2004 based upon a favorable review of Siefert's work performance. Moreover, Hogan did not find Siefert's tobacco habit sufficiently opprobrious to prevent him from dealing face to face with U-Haul customers as an Emergency Repair Unit specialist, i.e. a tow truck driver or from allowing Michael Jordan to serve as AFM despite his tobacco smoking. I find that Hogan's proffered rationale for failing to promote Siefert is pretext and that the sole reason for failing to promote him to the AFM position was his union and protected activity in giving testimony in this proceeding. I find in failing to promote Siefert Respondents violated Sections 8(a)(1), (3) and (4) of the Act.

3. The Alleged Violations of Section 8(a)(5) of the Act.

a. Fifth complaint paragraph 8(a)-the allegations regarding the *Gissel* bargaining order

Complaint paragraph 8(a) states that Respondents' conduct alleged to have violated Sections 8(a)(1) and (3) of the Act is so serious and substantial that the possibilities of erasing the effects of these unfair labor practices and of conducting a fair rerun election by the use of traditional remedies is slight, and the employee's sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone.

As a result of the election conducted in case 28-RC-6159, the Union was certified by the Board on February 9, 2004 as the exclusive collective bargaining representative of employees in the following appropriate bargaining unit:

[148] In *Georgia Power Company*, 341 NLRB No. 77 (2004), the Board held that it would not exercise its authority to order promotion of an employee to a supervisory position and thereby assume managerial responsibility where the evidence did not reflect that the sole reason for the failure to promote was the employee's union activity, that the employer had not advised the employee that she would be promoted but then rescinded the decision or that the employee would have been promoted to the supervisory position but for the protected activity. However, the Board concluded that the failure to promote was due to the employee's protected activity in violation of Section 8(a)(3) of the Act and ordered backpay at the rate the employee would have received had she been promoted.

> INCLUDED: All full time and regular part-time brake/tire specialists, detail specialists, engine specialists, mechanic express specialists, PM inspection specialists, pre/post inspection specialists, transmission specialists, van body specialists, mobile repair specialists, parts clerks, transfer drivers, repair dispatch specialists, senior clerk and schedulers employed by the Employer at and out of its 1900 South Decatur Boulevard, Las Vegas, Nevada, and 989 South Boulder Highway, Henderson, Nevada repair facilities.
>
> EXCLUDED: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

CGC contends that notwithstanding the Board's certification, a *Gissel* type bargaining order based on authorization cards is appropriate in this case to remedy Respondents' unfair labor practices.

In *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), the Supreme Court held that a remedial bargaining order based upon authorization cards from a majority of employees was appropriate where an employer commits unfair labor practices so egregious and serious that a fair election cannot be held. In *Gissel*, the Court identified two types of cases warranting a bargaining order. Category I cases involve exceptional, outrageous and pervasive unfair labor practices of "such a nature that their coercive effect cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be held." *Id*. at 614. Category II cases involve unfair labor practices "marked by less pervasive practices which still have the tendency to undermine majority strength and impede the election process." *Debbie Reynolds Hotel,* 332 NLRB 466 (2000). In Category II cases the Supreme Court said that the Board:

> Can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue. *Gissel*, 395 U.S. at 614

The fact that a Union may have already won an election does not preclude issuance of a *Gissel* bargaining order. *Briar Crest Nursing Home*, 333 NLRB 935, 942-43 (2001); *White Plains Lincoln Mercury*, 288 NLRB 1133, 1139 (1988).

Certain employer violations, the so called "hallmark" violations, are so likely to impair employee free choice that they will usually justify a *Gissel* bargaining order. These violations include plant closing, threats of plant closure, loss of employment, and discharge of union adherents in violation of Section 8(a)(3) of the Act. *NLRB v. Jamaica Towing Co*., 632 F.2d 208, 212 (2d Cir. 1980).

The time a *Gissel* bargaining order commences depends upon a number of circumstances but is not limited to the time when a union requests bargaining. In this regard in *Trading Port*, 219 NLRB 298 (1975), the Board said that:

> An employer's obligation to bargain under a bargaining order remedy should commence as of the time the employer has embarked on a clear course of unlawful conduct or has engaged in sufficient unfair labor practices to undermine the union's majority status.

If the employer has committed unfair labor practices sufficient to warrant a bargaining order and the union has not demanded recognition, the duty to bargain will extend back to the point at which the union attained majority status. *Davis Supermarkets*, 306 NLRB 426 (1992). However, where the employer first engaged in unfair labor practices after the union had either attained majority status or demanded recognition, the bargaining order will extend back no further than the point at which the employer "embarked on a clear course of unlawful conduct." *Chosun Daily News,* 303 NLRB 901 (1991).

In applying these principles to the facts of this case, I must first determine if Respondents have committed the type of unfair labor practices warranting a *Gissel* type bargaining order.

I have found that Respondents have not only threatened to close the Henderson repair shop but also followed through on the threat and unlawfully closed the Henderson repair shop on December 15, 2003. Respondents have discharged 42 bargaining unit employees, subcontracted out bargaining unit work and imposed more restrictive terms and conditions of employment in violation of Section 8(a)(3) of the Act. In addition Respondents have committed numerous violations of Section 8(a)(1) of the Act including threats of discharge, the discharge of a supervisor for refusal to assist in the commission of unfair labor practices, threats to impose more onerous working conditions, threats to shoot union representatives, implementing unlawful no-solicitation rules and interrogations of employees about their union activities.

These are "hallmark" Category I and II violations that have had the effect of undermining the Union's majority status. In fact 42 of the 56 employees who signed authorization cards were discharged between March 7, 2003 and February 11, 2004. In light of such pervasive unfair labor practices, it would have been futile for the Union to have demanded bargaining.

I find that Respondents' unfair labor practices were highly coercive and effective in undermining the Union's majority support. Respondents' unfair labor practices continued through the commencement of the trial herein and are likely to recur in the future since many of the officials who committed the unfair labor practices are still employed by Respondents. Moreover, that Respondents have not abandoned their efforts to defeat their employees union activities was confirmed by UHN President Sterling Hogan on October 7, 2004 when he told Decatur repair shop employee Robert Branning that Mark Shoen would never allow the Henderson repair shop to reopen if the Union gets in. These unfair labor practices are so pervasive that the possibility of erasing their effects and ensuring a fair election by traditional remedies is slight and that employee sentiments expressed through cards would be better protected by a bargaining order.

The time at which an employer's obligation under a bargaining order should attach has been established as that point in time when the employer embarked on a clear course of unlawful conduct and the Union had attained majority status. *Chosun Daily News, supra*.

In this case it has been established that the Union attained majority status on February 26, 2003 when it had received 45 cards in a bargaining unit of 89 employees. Respondents committed the first unfair labor practices on February 28, 2003 when Henderson shop foreman Jordan told employees that Respondents would close the shop if a union came

in. On March 3, 2003 Henderson shop manager T. Hill reiterated that if a Union came in Respondents would close the shop and terminate all the employees. These threats were followed on March 7, 2003 with UHI President of Phoenix Operations Mark Shoen's order to fire 10 employees and send a message that union activities would not be tolerated.

Respondents embarked on a clear course of unlawful conduct on February 28, 2003, two days after the Union attained majority status. The bargaining order will attach as of February 28, 2003.

b. Paragraphs 8(b) through 8(f) and May 28, 2004 complaint paragraphs 8(e) through (j)-the allegations regarding Respondents' refusal to recognize and bargain with the Union and to provide information

Fifth complaint paragraphs 8(b) and 8(c) allege that since on about May 7, 2003, the Respondents have failed and refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the bargaining unit employees.

Fifth complaint paragraphs 8(d) through (f) allege that on May 19, 2003, the Union requested that Respondents UHI and UHN provide the Union with certain information necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of unit employees and that since May19, 2003 Respondents have failed to furnish the Union with the requested information.

May 28, 2004 complaint paragraphs 8(e) through 8(h) allege that on February 25, March 15 and March 19, 2004 the Union requested in writing that Respondents UHI and UHN recognize and bargain with the Union as the exclusive collective bargaining representative of the bargaining unit employees and furnish the Union with information necessary and relevant to the Union's duties as exclusive collective bargaining representative of the bargaining unit employees.

May 28, 2004 complaint paragraphs 8(i) and 8(j) allege that Respondents UHI and UHN have failed and refused to bargain with the Union as exclusive collective bargaining representative of the bargaining unit employees and have failed and refused to furnish the Union with the information requested.

On May 19, 2003, the Union sent Kelly both a request to bargain and a request for information necessary to engage in collective bargaining for employees in the unit at U-Haul of Nevada, Inc.[149] The requested information included such items as labor costs, hours, wages, insurance, vacation, leave, pension, benefit plans, handbooks and policies.

After hearing no response to its May 19, 2003 letter, the Union sent a second letter to Kelly dated August 22, 2003[150], requesting bargaining in the unit in case 28-RC-6159 and the information requested in the May 19, 2003 letter. Kelly responded, in his capacity as UHI Vice President of Human Relations, with a letter dated August 29, 2003[151] stating that the Union was not the certified bargaining representative of employees in the unit and no bargaining obligation exists. The Board certified the Union as the collective bargaining representative of the unit employees on February 9, 2004.

[149] General Counsel's exhibit 406(a)-(d).
[150] General Counsel's exhibit 406(e).
[151] General Counsel's exhibit 406(f).

On December 11, 2003,[152] February 25, 2004,[153] March 15, 2004,[154] March 19 and March 30, 2004,[155] the Union sent letters to Respondents requesting bargaining and information necessary for bargaining. Respondents did not respond to any of these requests.

It has been established that Respondents' duty to recognize and bargain with the Union began on February 28, 2003, two days after the Union acquired majority status and the day the Respondents embarked on their course of unlawful conduct. By Kelly's letter of August 22, 2003, Respondents unequivocally refused to recognize and bargain with the Union and have violated Section 8(a)(1 and (5) of the Act.

An employer is under a duty to furnish information to a union so that the union can perform its statutory duties as bargaining agent. *Aluminum Ore Co. v. NLRB,* 131 F.2d 485 (7th Cir. 1942). The information demanded must be relevant and necessary to the relationship between the employer and the union as collective bargaining representative. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). Information relating to wages, hours, benefits and other terms and conditions of employment is presumptively relevant and should be provided to the Union in a reasonable period of time. *Crittenton Hospital*, 343 NLRB No. 81 (2004).

In this case each item of information requested by the Union was presumptively relevant as it related to wages, hours, benefits and other terms and conditions of employment. By refusing to furnish the information Respondents have violated Section 8(a)(1) and (5) of the Act.

c. Fifth complaint paragraphs 8(g) and 8(h) and May 28, 2004 complaint paragraphs 8(a) through 8(d)-the allegations regarding the unilateral changes

(1). Complaint paragraphs 8(g) and 8(h) allege that the subjects set forth in complaint paragraphs 7(a), 7(k), 7(n), 7(v), 7(x), 7(dd) and 7(gg) related to wages, hours and other terms and conditions of employment of bargaining unit employees and are mandatory subjects of collective bargaining and that Respondents engaged in the conduct described in the above mentioned complaint paragraphs without affording the Union an opportunity to bargain with the Respondents with respect to this conduct and the effects of this conduct.

Unilateral changes concerning mandatory subjects of bargaining by an employer in the course of a collective bargaining relationship are per se refusals to bargain. NLRB v. Katz, 369 U.S. 736 (1962).

(a). Instituting a hiring freeze

CGC at paragraph 7(a) of the 5th complaint alleges that on about March 5, 2003 Respondents instituted a hiring freeze at the Henderson and Decatur facilities.

On March 3, Kelly called Henderson repair shop manager T. Hill and said he was in Las Vegas. Kelly said, "I'll be there and take care of the union problem." Kelly told T. Hill to cease all hiring "because he didn't want to hire in any more Union."

[152] General Counsel's exhibit 406(h)-(i).
[153] General Counsel's exhibit 406(j)-(l).
[154] General Counsel's exhibit 406(n).
[155] General Counsel's exhibit 406(o)-(r).

From March 3, 2003 until June 24, 2004, other than employee, Peter Morris, hired through UHN in July 2003, no bargaining unit employees were hired at the Henderson or Decatur repair shops. The Union had no notice of the decision to impose a hiring freeze.

General Counsel contends that imposition of a hiring freeze is a mandatory subject of bargaining requiring notice to and bargaining with the Union, citing *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393 (1998). *Grand Rapids Press* does not support General Counsel's contention. Rather, it refers only to an ALJ decision that found imposition of a hiring freeze violated Section 8(a)(5) of the Act without elaboration. An ALJ decision is not binding precedent in this case.

The Supreme Court has held that mandatory subjects of bargaining involve issues involving employees. In *Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971), the Court said, "Section 8(a) of the Act, of course, does not immutably fix a list of subjects for mandatory bargaining···· But it does establish a limitation against which proposed topics must be measured. In general terms, the limitation includes only issues that settle an aspect of the relationship between the employer and the employees." In *First National Maintenance v. NLRB*, 452 U.S. 666, 677 (1981) the Court elaborated, "Some management decisions, such as choice of advertising and promotion, product type and design, and financing arrangements, have only an indirect and attenuated impact on the employment relationship. See *Fibreboard*, 379 U.S., at 223, 85 S. Ct. at 409 (STEWART, J., concurring). Other management decisions, such as the order of succession of layoffs and recalls, production quotas, and work rules, are almost exclusively 'an aspect of the relationship' between employer and employee." *Chemical Workers*, 404 U.S., at 178, 92 S. Ct. at 397. In assessing whether the decision to subcontract was a mandatory subject of bargaining the Court in *First National Maintenance* noted at page 679 that, "Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business. It also must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct an unfair labor practice."

In determining if pre-employment drug testing was a mandatory subject of bargaining, the Board in *Star Tribune,* 295 NLRB 543, 546 (1989), relying on *Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, *supra* looked to whether the drug testing applied to employees In finding pre employment drug testing was not a mandatory subject of bargaining the Board said, "We conclude that applicants for employment are not 'employees' within the meaning of the collective-bargaining obligations of the Act. Applicants for employment do not fall within the ordinary meaning of an employer's 'employees'. Applicants perform no services for the employer, are paid no wages, and are under no restrictions as to other employment or activities." The Board went on to conclude that pre employment drug testing did not "vitally affect" current bargaining unit members and for that additional reason it was not a mandatory subject of bargaining.

In this case General Counsel contends that Respondents had an obligation to bargain over the decision not to hire employees and thereby expand its business. While, as noted above, the decision not to hire employees for discriminatory reasons may violate other sections of the Act, the decision to expand or not expand a business is a managerial decision that is "essential for the running of a profitable business." Moreover, the decision to hire or not to hire employees does not involve an "aspect of the relationship between the employer and the employees," since there is no employment relationship at the time the employer makes a decision to add to its complement of employees. The decision not to hire is essentially a decision not to expand an employer's business and has only an indirect effect on the employment relationship of extant employees. I find that the decision not to hire employees is

not a mandatory subject of bargaining. Accordingly, Respondents did not violate Section 8(a)(5) of the Act in failing to provide the Union notice of the decision or an opportunity to bargain over the decision not to hire employees.

(b). CGC has alleged at paragraphs 7(k)(1) through 7(k)(6) of the 5th complaint that since May 7, 2003, Respondents required its unit employees to sign leave requests for their absences, more stringently administered its policies regarding absences and lateness, changed the status of an employee to that of new hire upon their return to work, prohibited unit employees from leaving their work area without permission, changed job classifications, and increased subcontracting of bargaining unit work.

(i). subparagraph 7(k)(1)-the new leave policy –

(ii). subparagraph 7(k)(2)-more stringently enforced absentee and tardiness policy

Respondents implemented a new leave of absence procedure by requiring employees to sign leave requests. The Union had no notice of this change.

Employees Nance (8a), Church (10b), Ellazar (10c), Magana (10e), Jacks(10h), Williams (10i), Stewart (12), Watkins (15a), and Kight(16a) were terminated for failing to comply with Respondent's new absentee and tardiness policy. The Union was given no notice of the new policy before it was implemented.

Subparagraphs 7(k)(1) and (2) deal with similar issues. Before February 28, 2003, and more particularly before May 20, 2003 Respondents did not require employees to call in to supervisors when they were going to be late or absent and Respondents did not require employees to sign leave of absence forms if they were going to be absent from work.

Employer policy including absenteeism, tardiness, and sick leave policy are mandatory subjects of bargaining. *Flambeau Airmold Corp*., 334 NLRB 165 (2001); *Ryder/Ate, Inc.,* 331 NLRB 889 (2000); Unilateral changes in attendance policy that alters an employer's past practice of leniency regarding work rules violates Section 8(a)(5) of the Act. *Duffy Tool & Stamping , LLC*, 330 NLRB 298 (1999). In the instant case it is clear that after the Union won the election Jordan announced a change in Respondent's practices of leniency regarding various work rules and on May 20, 2003 Fowler implemented changes in the call in procedure for lateness and absences. It is clear that employees also had to sign absence forms for the first time after the election. I find that the change in Respondents' past practice with respect to absence, lateness and leave policy violated Section 8(a)(1) and (5) of the Act.

(iii). subparagraph 7(k)(3)-change in hire date of an employee on medical leave

On June 16, 2003, Sandoval was injured at work and was off work on a medical leave until his full release to work on July 8, 2003. A few days after returning to work, Sandoval discovered that his job title had been changed from brake/tire specialist to PM inspection specialist. Sandoval's hire date had also been changed from January 13, 2003 to July 8, 2003. When he inquired about these changes, Jordan informed Sandoval that UHI told him that since Sandoval was off work more than 10 days he was considered on medical leave and when he returned he had to get a new start date. There is no UHI policy that mandates a new hire date for an employee on medical leave. No notice was given to the Union of the change to Sandoval's hire date.

Seniority is a mandatory subject of bargaining. *Venture Industries*, 327 NLRB 918 (1999). By unilaterally changing Sandoval's hire date, effecting his seniority for medical and vacation benefits, Respondents violated Section 8(a)(1) and (5) of the Act.

(iv). subparagraph 7(k)(4)-restrictions on employees leaving their work area

On May 8, 2003 Jordan held a meeting with five other employees in Henderson mechanic Magana's bay. Jordan said there would be a lot of changes since employees voted the Union in. Jordan said for absentees and lateness employees would have to call in, and they couldn't no show like they used to do. Jordan said the employees couldn't go to other bays for tools, they couldn't talk to employees in other bays or go to the bathroom without permission from the team leaders. Jordan said the rules were always there, just never enforced.

A few days after the election, Jordan approached a group of employees outside Calhoun's bay. Jordan said the union supporters don't know what's coming. There will be a lot of changes, a lot of cracking down. Jordan said there would be no leaving the bay and going to the bathroom; no more horseplay; and you can't leave the bay to get parts.

In May 2003, after the election, Fowler and Jordan told team leaders that bargaining unit employees could not leave their bays, that if employees needed something they should go to the team leader and that smoke breaks should only occur during regular break time. Lingao passed this information along to his team members.

On December 9, 2003, Fuller was speaking to two employees and said it was not fair, that employees with no or low efficiency should have been fired first. Miner and Jordan were a few feet away. About an hour later, Jordan came to Fuller's bay and said you shouldn't have been talking about company business. Stay in your bay and do your work. He gave Fuller a written warning. The warning reads:

> On December 9, 2003, Larry Fuller made inappropriate comments following the sequence of events that occurred previously which were business related. This notice is to inform you that this type of behavior will not be accepted or tolerated. We expect from you to perform the task at hand, do business as usual, and stay within the confines of your work area unless otherwise specified by a supervisor.

These new work rules were not discussed with the Union and the Union was not given notice of the new work rules before they were implemented.

Work rules are mandatory subjects of bargaining. *McCotter Motors Co*., 291 NLRB 764 (1988). The work rules changes announced by Jordan on May 8, 2003 and by Fowler in May 2003 and enforced thereafter, violated Section 8(a)(1) and (5) of the Act.

(v). subparagraph 7(k)(5)-changed job classifications

On about June 23, 2003 Respondents changed the job classifications of Michael Kight and Hernan DeDios. Joseph Vitek, Jimmy Pagtulingan, Billy Loyd, Antonio Herrera, Jesse Gilson, Francisco Sandoval, Larry Fuller, Alberto Banico, Hernan Fontes, Howard Calhoun and William Tyler. Kight's classification changed from mechanical express specialist to PM inspection specialist, DeDios was changed from engine specialist to mechanical express specialist Vitek was changed from detail specialist to PM inspection specialist, Pagtulingan was changed from pre inspection specialist to drivability specialist, Loyd was changed from brake/tire specialist to shop foreman, Herrera was changed from brake/tire specialist to PM

inspection specialist, Gilson was changed from PM inspection specialist to brake/tire specialist, Francisco Sandoval was changed from Brake/tire specialist to PM inspection specialist, Larry Fuller was changed from shop supervisor to engine specialist, Fontes was changed from mechanical express specialist to PM inspection specialist, Banico was changed from engine specialist to drivability specialist, Calhoun was changed to mechanical express specialist, although the only evidence reflects that he was hired as a mechanical express specialist and Tyler was changed from transfer driver to trailer specialist. The change in job classifications was not announced to the Union nor was the Union given an opportunity to bargain about the decision.

Changes in employee job classifications are a mandatory subject of bargaining. *Standard Motor Products*, 331 NLRB 1466 (2000). By changing the job classifications of the above mentioned employees, Respondents violated Section 8(a)(1) and (5) of the Act.

(vi) subparagraph 7(k)(6)-increased subcontracting

In March 2003, T. Hill said the inability to hire new employees slowed down the production at the Henderson repair facility. T. Hill discussed this matter with Fowler in March 2003 and told Fowler he was unable to hire employees and therefore could not keep up his quota of trucks. Fowler agreed but said that due to the Union situation, it was best if they did not hire anyone. Fowler told T. Hill to increase the use of outside vendors. T. Hill estimated that outside vendors cost about $70 per hour versus in house labor costs of $24.

Upon assuming the duties of Henderson repair shop manager on May 9, 2003, UHI Repair Vice President Fowler began seeking outside vendors (OSG) to perform repairs on U-Haul trucks because of the overabundance of work at the Henderson repair shop. General Counsel's exhibit 179 reflects substantially increased subcontracting activity by UHN after March 7, 2003. UHI management officials in August 2003 recommended additional use of subcontractors to perform unit work. The decision or the effects of the decision to increase subcontracting was not discussed with the Union.

The subcontracting of unit work is a mandatory subject of bargaining. *Overnight Transportation*, 330 NLRB 1275 (2000).

Respondents defend their subcontracting of bargaining unit work to outside vendors on the ground that it was an extension of existing practice done for legitimate business reasons.

Respondents point to General Counsel's exhibit 179 to justify their subcontracting practice, noting that before May 2003, Respondents engaged in extensive subcontracting of unit work to outside garages.

However, a closer examination of General Counsel's exhibit 179 reflects that while Respondents may have engaged in subcontracting bargaining unit work prior to discovering its employees' union activities in March 2003, after March 2003 the amount of bargaining unit work subcontracted nearly doubled. It is this change that CGC alleges constitutes a violation of Section 8(a)(5) of the Act.

While Respondents may argue that its subcontracting was caused by exigent circumstances, I have found that the need for subcontracting was caused by Respondents efforts to eliminate the bargaining unit through the combination of a hiring freeze, unlawful terminations an inefficient work rules. Respondents cannot justify increased subcontracting by

their unlawful activity. I find that Respondents violated Section 8(a)(1) and (5) of the Act in unilaterally subcontracting bargaining unit work.

(c). CGC has alleged at paragraphs 7(n)(1) and 7(n)(2) of the 5th complaint that since June 2003, Respondents implemented new call-in procedures for unit employees and changed its practice of moving trucks in and out of work bays.

(i). Subparagraph 7(n)(1)-new call-in procedures

As discussed above in sections 9(a) and (b), on March 14, 2003, Respondents implemented a new call-in procedure. Ozaki made up the first call-in sheet on March 14 and used it to record employee attendance. T. Hill told Ozaki that the call-in sheets were going to be used to track employees absent from work. Fowler told Ozaki to fax the call in sheets each day to Kelly at UHI.

On about May 20, 2003, Fowler posted a memo to all employees of the Henderson and Decatur repair shops. The memo states in pertinent part:

> Additional note:
>
> It is important that everyone needs to be at work each work day and on time to do the work that needs to be done. Anyone that will be late and or cannot come into work for any reason must call me personally at the Henderson Shop No. (702) 568-5141 or my Cell No. (602) 300-3387.
>
> Thank you and have a good weekend.
>
> Signed by Dan Fowler.

On about June 26, 2003 Jordan issued a similar memo.

The Union was given no notice of the new policy before it was implemented.

As noted above, attendance policy is a mandatory subject of bargaining. *Flambeau Airmold Corp., supra; Ryder/Ate, Inc., supra.* By changing the call-in policy without notice to or bargaining with the Union violated Section 8(a)(1) and (5) of the Act.

(ii). subparagraph 7(n)(2)-new practice of moving trucks in and out of bays

Before the May 7, 2003 election, PM teams were allowed to move trucks in and out of their work bays if a truck needed parts that were not yet available. After Miner arrived in August 2003, Jordan told team leaders to keep trucks in the bay even if parts were not available, lowering the number of trucks that could be serviced. Jordan explained that they should keep the trucks in the bays because scheduler, Bill Loyd, was not keeping track of where the trucks were out on the lot. The work rule change regarding movement of trucks in and out of bays was not discussed with the Union nor was the Union given notice of the new rule.

As noted above work rules are mandatory subjects of bargaining. Changes in rules effecting productivity are also mandatory subjects of bargaining. *Tenneco Chemicals, Inc*., 249 NLRB 1176 (1980). This new work rule effecting employees' productivity and efficiency was a mandatory subject of bargaining. Failure to bargain over the implementation of the rule violated Section 8(a)(1) and (5) of the Act.

(d). CGC has alleged at paragraph 7(v) of the 5th complaint that on September 2, 2003 Respondents conducted a mandatory drug test of Henderson bargaining unit employees resulting in the discharge of eight bargaining unit employees.

On September 2, 2003, all Henderson repair shop employees were told they were required to provide urine samples. It is undisputed that on September 2 and 3, 2003 all employees of the Henderson repair facility were required to take drug tests. The Union had no notice of the mandatory drug tests.

The drug testing of current employees is a mandatory subject of bargaining. *Johnson-Bateman Co.,* 295 NLRB 180 (1989). Respondents failed to follow their extant drug testing guidelines involving substantial cause. This was a mass drug test performed without substantial reason to believe the bargaining unit employees were using drugs. By failing to follow extant drug testing policy and by failing to accord the Union notice of or an opportunity to bargain about the mandatory testing, Respondents violated Section 8(a)(1) and (5) of the Act.

(e). CGC has alleged at paragraph 7(x) of the 5th complaint that on September 5, 2003 Respondents began more strictly enforcing efficiency standards with respect to unit employees.

(f). CGC has alleged at paragraph 7(dd) of the 5th complaint that on December 9 and 10, 2003 Respondents more strictly enforced efficiency standards upon unit employees.

In September 2003 Respondents discharged employees Henderson repair shop mechanics Calhoun, Carreno, Herrera, and Tanglao for low efficiency.

On December 9 and 10, 2003 Respondents discharged Henderson repair shop employees Banico, Gilson, Lingao, and Pagtulingan because of low efficiency. Respondents gave no notice to the Union of the more strict enforcement of efficiency standards

Efficiency and production standards are mandatory subjects of bargaining and changes to extant standards are mandatory subjects. *Alwin Mfg. Co*., 314 NLRB 564 (1994).

Respondents contend that they did not violated Section 8(a)(5) of the Act in enforcing efficiency standards since there is no violation in enforcing extant standards that predate union activity. *McClatchy Newspapers, Inc., d/b/a The Fresno Bee,* 337 NLRB 1161 (2002); *Trading Port, Inc*., 224 NLRB 980, 983 (1976); *Wabash Transformer Corp*., 215 NLRB 546 (1974).

Respondents argue further that they had no obligation to bargain with the Union over every single change to extant policy that is not a material, substantial, and significant change. *Bath Iron Works Corp*., 302 NLRB 898, 901 (1991).

In each of the cases cited by Respondents, the Board found that there was no material change in extant efficiency standards. In *Bath Iron Works*, the Board found that the more accurate measuring of employee productivity against established efficiency standards coupled with tightening of extant disciplinary sanctions did not require bargaining.

However in this case, it has been established that Respondents deviated from and discriminatorily imposed its efficiency standards based upon the presence or absence of Union sympathy. This was a material, substantial and significant deviation from extant efficiency standards.

Respondents further take the position that it had no obligation to bargain over the imposition of employee discipline pursuant to efficiency standards since the Union did not request "before the fact" negotiations before they implemented discipline for failure to adhere to efficiency standards citing *Washoe Medical Center, Inc.,* 337 NLRB 202, 206 (2001) and *Alan Ritchey Inc.,* an administrative law judge's decision that relies on *Wahoe Medical Center.*

The judge in *Washoe Medical Center,* in finding no refusal to bargain over the imposition of employee discipline, noted that she did not reach the issue of whether the employer would have refused to bargain upon request.

In this case Respondents' citation to *Washoe Medical Center, supra*, is inapposite. Unlike the employer in *Washoe Medical Center*, here Respondents have refused to recognize or bargain with the Union at all times since May 19, 2003. Moreover, the Board will not require a demand for bargaining where such a request would be futile. *Gannett Rochester Newspapers*, 319 NLRB 215 (1995); *Central Transport*, 306 NLRB 166 (1992). In this case the Union had no obligation to request bargaining over the imposition of discipline as that demand would have been futile in view of Respondents' intransigent refusal to recognize or bargain with the Union.

By unilaterally deviating from extant production standards and discriminatorily applying them, Respondents violated Section 8(a)(1) and (5) of the Act.

(g). CGC has alleged at paragraph 7(gg) that on December 15, 2003 Respondents closed the Henderson repair facility.

On December 15, 2003, Respondents closed the Henderson repair shop and moved all remaining employees to the Decatur facility. The Union was never given notice or an opportunity to bargain over the decision or effects of the decision to close the Henderson facility.

The closure or consolidation of a facility is a mandatory subject of bargaining. *SPX Corp*., 333 NLRB 875 (2001); *Kajima Engineering*, 331 NLRB 1604 (2000). In addition, there is no evidence Respondents changed the nature and scope of its business, relieving them of an obligation to bargain, since the Decatur facility performs essentially the same work as that done at the Henderson facility. *First National Maintenance Corp., v. NLRB,* 452 U.S. 666 (1981).

By closing the Henderson repair facility without notice to or bargaining with the Union, Respondents violated Section 8(a)(1) and (5) of the Act.

(2). Paragraphs 8(a) through 8(d) of the May 28, 2004 complaint allege that on about December 9, 2003 Respondents imposed harsher efficiency standards upon bargaining unit employees and on March 12, 2003 eliminated the positions of transfer drivers. It is alleged further that the subjects in paragraphs 8(a) and 8(b) related to wages, hours and other terms and conditions of employment of bargaining unit employees and are mandatory subjects of collective bargaining and that Respondents engaged in the conduct described in the above mentioned complaint paragraphs without affording the Union an opportunity to bargain with the Respondents with respect to this conduct and the effects of this conduct.

(i). CGC has alleged at paragraph 8(a) of the May 28, 2004 complaint that on December 9, 2003 Respondents imposed harsher efficiency standards on unit employees under threat of plant closure and termination.

After the Henderson facility closed in December, Miner held a meeting of employees at the Decatur repair shop in December 2003 or January 2004. Miner told employees that they had to have 100% efficiency or they would be fired. The only evidence of an efficiency standard set by Respondents is an 80% standard for some employees. No notice was provided to the Union regarding the new efficiency rules.

As noted above changes in efficiency standards are mandatory subjects of bargaining. By imposing yet more stringent standards of efficiency in December 2003 or January 2004, Respondents violated Section 8(a)(1) and (5) of the Act.

(ii). CGC has alleged that on March 12, 2004, Respondents eliminated the positions of transfer drivers, causing the layoffs of Linda McKeehan and Gene Akin.

It is undisputed that Respondents eliminated the position of transfer driver at the Decatur facility on March 12, 2004.

On March 10, 2004, Jordan told Akin he would be laid off on March 12. Jordan said Respondent did not need transfer drivers. On March 12, Jordan offered Akin a job in the shop servicing batteries. Akin declined the job offer as too strenuous.

On March 10, 2004, Jordan told McKeehan that she would be laid off on March 12, 2004. Jordan said it came down from Miner. On March 12, 2004, Jordan offered McKeehan another job taking some of the load off Michelle Jordan. McKeehan said she would be interested. No job was forthcoming. Also on March 12, 2004, Michelle Jordan told McKeehan that UHN managers at rental centers would bring trucks to the Decatur repair center for service and pick them up when they were ready to rent. Respondents eliminated the position of transfer driver without notice to the Union.

The decision to eliminate positions from the bargaining unit and lay off employees is a mandatory subject of bargaining. *Kajima Engineering, supra; Daniel I. Burk Enterprises,* 313 NLRB 1263 (1994). By unilaterally eliminating the position of transfer driver and laying off Akin and McKeehan, Respondents violated Section 8(a)(1) and (5) of the Act.

(3). Paragraphs 8(a)-(o) of the December 29, 2004 complaint allege that Respondents violated Section 8(a)(1) and (5) of the Act by hiring employees for Unit positions, by giving wage increases to employees in the Unit, by using temporary employees to perform Unit work, by transferring employees from non-Unit to Unit positions, by providing free lunches to unit employees, by no longer assigning emergency repair calls based on seniority,[156] by changing the amount of time mobile repair units were paid for emergency calls, by changing the job duties of unit employee Herman de Dios, by granting time off and by giving monetary awards to unit employees for high efficiency, by changing health benefits for unit employees, by giving employees paid time off to vote, and by bypassing the Union and dealing directly with unit employees concerning terms and conditions of employment.

[156] In the supplemental brief, General Counsel moved to dismiss paragraph 8(f) of the December 29, 2004 Complaint since no evidence was adduced to support this allegation. I grant General Counsel's motion to dismiss paragraph 8(f).

(i). Complaint paragraph 8(a)-the allegations that Respondents have hired employees for bargaining unit positions.

In its amended answer[157] Respondents admit that since April 25, 2004 they hired employees to positions in the unit without notice to or an opportunity to bargain with the Union. General Counsel, in its brief contends that in hiring some 17 employees, both temporary and permanent, into the bargaining unit without bargaining with the Union, violated Section 8(a)(5) of the Act. No authority is cited for this proposition and I am baffled by General Counsel's argument. Section 8(d) of the Act defines the obligation to bargain collectively as encompassing "wages, hours, and other terms and conditions of employment. . ." It has long been held that various integral parts of the employment relationship are embraced by the language of Section 8(d). The decision to hire employees to fill unit positions is not a mandatory subject of bargaining but is rather an area of managerial discretion separate and apart from the employment relationship. While the fact that the employer decided not to hire for a period of time for other reasons may violate Section 8(a)(3) of the Act, it does not create an obligation to bargain over the essential decision of when and whom to hire. *Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971); *Star Tribune,* 295 NLRB 543, 546 (1989). I will dismiss this complaint allegation.

(ii). Complaint paragraph 8(b)-the allegations that Respondents gave bargaining unit employees wage increases.

Respondent in its amended answer[158] admits that it has given wage increases to bargaining unit employees since April 2004 without notice to or bargaining with the Union. In addition, the record reflects Respondents have given wage increases to many bargaining unit employees.[159] Wages are a mandatory subject of bargaining. *Northwest Graphics, Inc.*, 342 NLRB No. 127 (2004). By failing to provide notice to or bargain with the Union before it gave bargaining unit employees wage increases, Respondents violated Section 8(a)(5) of the Act.

(iii). Complaint paragraph 8(c)-the allegations that Respondents used temporary employees to perform bargaining unit work.

In its amended answer, Respondents admit that they hired at least one bargaining unit employee, Michael Sukiasian through a temporary agency. The record reflects that Rodney McCants was hired as a bargaining unit employee through a temporary agency. General Counsel contends that hiring temporary employees is a mandatory subject of bargaining and cites *St. George Warehouse, Inc*., 341 NLRB No. 120 (2004) to support this proposition. *St. George Warehouse* is a subcontracting case where bargaining unit work was transferred to a temporary agency. In this case, there is no evidence that bargaining unit work was subcontracted to another employer. There is likewise no evidence that Respondents were attempting to change the unit description. *AMF Bowling 303 NLRB 167 (1991)* Rather it appears that Respondents hired employees through an agency but retained control over the manner and means of performance of those bargaining unit employees, ensuring that they were employees of Respondents not of the temporary agency. I find that Respondents did not violate Section 8(a)(5) of the Act by hiring unit employees through a temporary agency. I will dismiss this portion of the complaint.

[157] General Counsel's exhibit 1(fk).
[158] Ibid.
[159] General Counsel's exhibit 524.

(iv). Complaint paragraph 8(d)-the allegation that Respondents transferred Damon Santiago from a non-bargaining unit to a bargaining unit position.

Respondents admitted that on or about July 16, 2004, they transferred Damon Santiago from a non unit position to a bargaining unit position without notice to or bargaining with the Union. General Counsel contends that a transfer from a non unit to a unit position is a mandatory subject of bargaining and cites *Dlubach Corp*., 307 NLRB 1138, 1160 (1992) as authority. Unlike here, in *Dlubach* the Respondent admitted the transfer was a mandatory subject of bargaining.

Absent a removal of work from the bargaining unit work through contracting out or transfer to non unit employees, where the work continues to be performed by employees within the bargaining unit there is no violation since there is no attempt to change the unit description. *A.M.F. Bowling Co., supra,* citing *Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203 (1964).

In this case Santiago was transferred into the bargaining unit. There was no transfer of unit work thereby diminishing work for bargaining unit employees nor was the description of the bargaining unit altered in any way. I find that the transfer of Santiago did not violate Section 8(a)(5) of the Act and I will dismiss this allegation.

(v). Complaint allegation 8(e)-the allegation that in August 2004 Respondents provided free lunch for bargaining unit employees.

Respondents admit that since on or about August 2004 they have provided bargaining unit employees with free lunch on a monthly basis. General Counsel contends that a free monthly lunch is a substantial and material benefit for employees and a mandatory subject of bargaining. *The Fresno Bee*, 339 NLRB 1214 (2003); *Beverly Enterprises*, 310 NLRB 22 (1993).

The record reflects that Hayes spent a total of about $300 per month or about $5 per employee on lunch for bargaining unit and non unit employees. It is clear that one of the goals of the lunches was to increase employee efficiency since employees who met efficiency standards of 86% got steak for lunch while those who fell below that standard got hot dogs.

Whether providing meals for employees as an incentive to increase efficiency constitutes a mandatory subject of bargaining depends upon a finding that the benefit is sufficiently substantial so as to constitute a term and condition of employment for purposes of Section 8(a)(5) and 8(d). *EIS Brake Parts*, 331 NLRB 1466 (2000). The Board has found that one free pizza lunch as a reward for increased efficiency is not so substantial as to constitute a term and condition of employment where it was spontaneous and not held out as a carrot to induce higher production. *EIS Brake Parts, supra, at 1469.* Similarly discontinuing Christmas bonuses of $20, Christmas hams, a company picnic and a Thanksgiving meal were not deemed terms and conditions of employment but gifts where they were not related to employment. *Stone Container Corp.*, 313 NLRB 336 (1993); *Benchmark Industries, Inc*., 270 NRLB 22 (1984). Neither *The Fresno Bee, supra* nor *Beverly Enterprises, supra* are apposite as they do not involve the issue of whether the "benefit" is so substantial as to arise to a term and condition of employment.

In the instant case, it is clear that the "free lunches" have been held out as a "carrot" to induce increased production by unit employees. The lunches have been ongoing for at least a year. I find that the lunches are not gifts but rather have risen to the level of a term and

condition of employment given their ongoing nature and their goal to increase production by bargaining unit employees. As a term and condition of employment, the lunches are a mandatory subject of bargaining. Respondents' institution of the lunches without notice to or bargaining with the Union violated Section 8(a)(5) of the Act.

(vi). Complaint allegation 8(g)-the allegation that in September 2004 Respondents changed the amount of time mobile repair units were paid for emergency calls.

Respondents admit in their amended answer that that since September 2004 Hayes reduced the amount of time MRU drivers can claim for travel time for emergency repairs from 2.5 to 2 hours without notice to or bargaining with the Union. This reduced the amount of compensation MRU drivers, part of the bargaining unit, could claim. It was Respondents' longstanding practice to allow MRU drivers to claim 2.5 hours compensation for travel time on emergency calls.

The Board has held that hours are a mandatory subject of bargaining. *Kentucky River Medical Center,* 340 NLRB No. 71 (2003). The failure to provide notice to or bargain with the Union about this change violated Section 8(a)(5) of the Act. *88 Transit Lines*, 300 NLRB 177, 184 (1990).

(vii). Complaint allegation 8(h)-the allegation that in October 2004 Respondents changed the job duties of unit employee Herman de Dios.

In the amended answer Respondents admit that in October 2004 Respondents' Decatur Shop Manager Hayes changed the job duties of bargaining unit employee de Dios from exclusively mechanical express to both mechanical express and heavy repair technician without notice to or bargaining with the Union. The work of mechanical express technician involved changing spark plugs, manifolds, working on ignitions and other minor repairs. Heavy repair technician required removal and installation of engines, transmissions and electrical repairs.

A change in work assignment that is material, substantial and significant is a mandatory subject of bargaining. *Flambeau Airmold Corp*., 334 NLRB 165, 171 (2001); *Alamo Cement Co.*, 277 NLRB 1031 (1985).

In this case the assignment of de Dios to both positions both increased his workload and diminished the availability of other bargaining unit work to other employees. This is a significant and material change mandating bargaining. The failure to notify or to bargain with the Union over this change in de Dios' job duties violated Section 8(a)(5) of the Act.

(viii). Complaint allegation 8(i) and (k)-the allegations that in October and November 2004 Respondents granted time off and monetary awards to bargaining unit employees for increased efficiency.

In their amended answer Respondents admit that since October 2004 Hayes began providing bargaining unit employees awards based on efficiency, including time off and that on November 2, 2004 Hayes granted employees four hours paid time off to vote, without notice to or bargaining with the Union.

The record reflects that starting in October 2004 Respondents through Hayes began rewarding employees' high efficiency ratings by granting them paid time off and awarding other

items such as tools. Employees were warned that if they did not achieve an efficiency rating of 86%, they could be written up. De Dios was granted a paid day off for his high efficiency.

Hayes admitted that in October 2004 he told bargaining unit employees that they would be granted four hours paid time off to vote in the upcoming November election. Respondents have never provided paid time off for employees to vote.

In *Pepsi America, Inc*., 339 NLRB No. 125 (2003), the Board found that the unilateral discontinuance of an attendance policy permitting employees with good attendance to have paid time off was an employee benefit and a mandatory subject of bargaining. Likewise in *Verizon New York, Inc*., 339 NLRB No. 6 (2003), unilaterally rescinding a past practice of allowing employees paid time off to donate blood was a mandatory subject.

As noted above, whether an employer has an obligation to bargain over benefits rests upon a determination of they rise to the level of a term and condition of employment or are merely gifts. *EIS Brake Parts, supra.*

Here, the time off and tools were ongoing rewards aimed at increasing productivity. The rewards were not isolated but "carrots" for good efficiency. I find that the time off and award of tools are mandatory subjects of bargaining as they rise to the level of terms and conditions of employment. Respondents' failure to give the Union notice or to bargain about time off and other awards violated Section 8(a)(5) of the Act.

There is no evidence that the paid time off Hayes granted employees to vote in the November 2004 National elections was tied to production goals. It was also an isolated event and while Respondent had no practice of paying employees to vote they had a practice of granting time off to vote. I find that granting paid time off to vote did not rise to the level of a term and condition of employment. Since Respondents had no obligation to bargain with the Union over this isolated gift, I find l there was no violation of Section 8(a)(5) of the Act. I will dismiss this allegation.

(ix). Complaint allegation 8(j)-the allegation that on October 14 and 24, 2004 Respondents changed health benefits for bargaining unit employees.

In their amended answer Respondents admitted that they changed bargaining unit employees' health benefits by designating a new healthcare provider and providing a new vision plan without notice to or bargaining with the Union.

The changes in health benefits included a wholly new vision care plan and changes to the medical plan that resulted in changes to the prior notification requirements for employee visits to doctors, changes in over-the-counter drug reimbursement and prescription drug quantities and a new network of dentists employee could use.[160]

Group health insurance is a mandatory subject of bargaining. *Standard Oil Co*., 92 NLRB 227 (1950). A unilateral change in the identity of an insurance carrier violates Section 8(a)(5) of the Act if it causes material, substantial and significant differences. *Keystone Consolidated Industries, Keystone Steel and Wire Division,* 237 NLRB 763 (1978). A disparity in reimbursement or change in fee schedules or a change in the speed of processing claims may be such a significant change. The burden rests with General Counsel to establish that changes to health benefits are material, substantial and significant. *Keystone, supra* at 766.

[160] General Counsel's exhibit 527.

Like the changes in the health plan in *Keystone,* I find that the changes in Respondents' health plans were significant, material and substantial and required bargaining before they were implemented. In failing to provide notice to or bargain with the Union over the changes in the unit employees' health plans, Respondents violated Section 8(a)(5) of the Act.

(x). Complaint allegation 8(n) and (o)-the allegation that in August and September 2004 Mark Hayes bypassed the Union and dealt directly with employees concerning pay raises and time paid for emergency calls .

An employer's direct dealing with employees by offering wage increases improperly affects the bargaining obligation and violates Section 8(a)(5) of the Act. *Americare Pine Lodge Nursing and Rehabilitation Ctr.*, 325 NLRB 98 (1997).

Here the evidence reflects that Hayes dealt directly with employees in the bargaining unit when he granted wage increases and changed the amount of time the MRU drivers could claim for travel to and from emergency calls. Respondents' bypassing the Union and dealing directly with unit employees concerning terms and conditions of employment violated Section 8(a)(5) of the Act.

4. Respondents' Other Defenses

a. New Respondents were Denied of Due Process of Law

In their post-hearing brief Respondents again raise the issue that they were denied due process of law by being joined in this proceeding on February 23, 2004, on the fifteenth day of a 65 day hearing. This objection was first considered on February 23, 2004 and rejected. It was again rejected by the Board in its Order of March 10, 2004 denying New Respondents' special permission to appeal the ALJ's ruling consolidating cases. Respondents' claim is predicated on the assumption that each Respondent is a separate and distinct entity. I have found this not to be the case. New Respondents and UHN are a single integrated enterprise. At all times they were present and represented by counsel for UHN. Moreover, the New Respondents liability is derivative in nature as was the case in *BMD Sportsware*, 283 NLRB 142, 154 fn. 23 (1987) where the new respondents were joined to the proceedings on the fourth day of an 11 day trial. The Board may impose derivative liability in a compliance proceeding even though the party was not present at the underlying unfair labor practice trial. *Aiken Underground Utility Services,* 336 NLRB 1033 (2001); *Southeastern Envelope Co*., 246 NLRB 423 424 (1979); *Key Coal Co*., 240 NLRB 1013, 1016 (1979).

In the instant case, in addition to being represented by one of the members of the single integrated enterprise from the outset of the hearing, after being granted a 92 day continuance to prepare, each of New Respondents was given a full opportunity to call witnesses previously called and to present any relevant evidence on all of the issues litigated at the hearing.

I again reject New Respondents' contention that they were denied due process of law in this case.

b. The Claims Against New Respondents are barred by Section 10(b) of the Act

In both their Answer to the 5th complaint and in their post-hearing brief, New Respondents contend that Section 10(b) of the Act precludes issuance of any complaint against

them since the unfair labor practices alleged to have occurred from February to December 2003 were committed more than six months before a charge was served upon them.

The charge in case 28-CA-19244 was filed by the charging party Union on January 7, 2004 and served on New Respondents that same date alleging that the New Respondents had violated Section 8(a)(1)(3) and (5) of the Act by acting jointly in closing the Henderson repair facility.

New Respondents' arguments are misplaced. As noted above, the only new allegations in the 5th complaint which was served on all of the new Respondents before February 23, 2004, concern the derivative liability of the New Respondents as single employer, single integrated enterprise and joint venturers. No new substantive allegations were added. The Board has held that when one member of an alter ego or single employer is served with a timely charge and complaint it is service on all members of the alter ego or single employer. *Carib Inn Tennis Club*, 322 NLRB 214, 216 (1996); *Il Progresso Italo Americano Publishing*, 299 NLRB 270, 273 fn. 4 (1990). Having found various combinations of New Respondents are a single integrated enterprise, single employer and joint venturers, timely service of all charges on Respondent UHN constituted service on each member of the various joint employer New Respondents.

c. The Automatic Stay in the AMERCO Bankruptcy Proceeding Precludes Joinder of AMERCO in this Proceeding

New Respondents contend that the automatic provisions of the Bankruptcy Act enjoin these proceedings against Respondent AMERCO which was in Chapter 11 reorganization proceedings on February 23, 2004.

Although the Bankruptcy Code provides for automatic stays of non bankruptcy court proceedings against a debtor, it excepts from the stay actions, "by a governmental unit to enforce such governmental unit's policy or regulatory power."[161] In *NLRB v. Evans Plumbing Co.,* 639 F.2d 291 (5th Cir. 1981) the Fifth Circuit concluded that Board proceedings fall within the statutory exception to the automatic stay provision. *In re Bel Air Chateau Hospital,* 611 F. 2d 1248 (9th Cir. (1979), the Ninth Circuit held that the district court had no authority to enjoin Board proceedings where the debtor's assets are not threatened. Moreover, the 9th Circuit has found that the Board's liquidation of a claim in an unfair labor practice proceeding does not constitute such a threat. *In re Tucson Yellow Cab Co.,* 27 B.R. 621, 112 LRRM 2705 (B.A.P. 9th Cir. 1983). *Chao v. Hospital Staffing Services, Inc.,* 270 F.3d 374 (6th Cir. 2001), cited by Respondents, is contrary to both *Evans Plumbing* and *Bel Air Chateau* and has not been followed by the Board. I conclude that the automatic stay does not preclude these proceedings.

d. Counsel for the General Counsel Unlawfully Solicited Unfair Labor Practice Charges Against New Respondents

It is Respondents' contention that the charges in case 28-CA-19244 were improperly solicited by a Board agent and thus are barred. In *Petersen Construction Corp., Etc.,* 128 NLRB 969, 972 (1960), the Board rejected respondents' argument that amended charges and the complaint based upon them should be dismissed because the charges were the product of solicitation by Board agents. In *Petersen* two individual charging parties filed charges against an employer and two local unions. During investigation of the charges, the Regional Office discovered that the alleged discrimination against the charging parties resulted from the

[161] 11 U.S.C. sec. 362(b)(4)(5) (1994).

existence of a master labor agreement to which all of the new respondents were parties. One of the charging parties filed amended charges adding as respondents all signatories to the master agreement plus a number of additional local unions. The Board held it was the duty of the General Counsel to take proper measures to effectively remedy all of the unfair labor practices revealed by the investigation.

In the course of the investigation of the instant case, Counsel for the General Counsel uncovered evidence concerning the joint employer status of New Respondents. Counsel for the General Counsel provided the Union with a charge and directions that the Union could file a charge if it wished to do so. In providing the charging party Union with the option of filing an additional charge adding New Respondents, Counsel for the General Counsel was fulfilling his obligation as a public official charged with enforcing public rights under *Petersen*. There was no improper solicitation of charges.

Summary

I have found the following complaint paragraphs and subparagraphs were sustained and will be remedied, below. 5th complaint: 6(a), 6(b)(1) through 6(b)(4), 6(c)(1) through 6(c)(3), 6(d)(2), 6(e)(2), 6(f)(1) and 6(f)(2), 6(g), 6(h)(1) and 6(h)(2), 6(i)(1) and 6(i)(2), 6(k), 6(m), 6(n), 6(r)(1) through 6(r)(3), 6(s) through 6(v), 6(x) through 6(z), 6(aa), 6(bb), 6(cc), 6(ee), 6(ff), 6(gg), 6(hh) through 6(kk), 6(ll); 7(b), 7(c), 7(e), 7(f), 7(g), 7(h), 7(i), 7(j), 7(k)(1) through 7(k)(4), 7(k)(6), 7(l), 7(m), 7(n)(1) and 7(n)(2), 7(o), 7(p), 7(q), 7(r),7(s), 7(t), 7(u), 7(v), 7(w), 7(x), 7(y), 7(z), 7(bb), 7(cc), 7(dd), 7(ee), 7(ff), 7(gg), 8(a) through 8(h), 9, 10, 11, 12, and 13; May 28, 2004 complaint: 6(a) and 6(b), 7(a) through 7(c), and 7(e), 8(a) through 8(k), 9, 10, and 11; December 29, 2004 complaint: 6(a), 6(b), 7(a) through (c), 8(b), 8(e), 8(g), 8(h), 8(i), 8(j), 8(l) through 8(o), 9 through 13.

I have found the following complaint paragraphs and subparagraphs were not sustained and will be dismissed. 5th complaint: 6(d)(1), 6(e)(1), 6(h)(1), 6(o) through 6(q), 6(u)(1) through 6(u)(3), 6(dd), 7(a), 7(d), 7(k)(5), 7(aa). May 28, 2004 complaint: 7(d). December 29, 2004 complaint: 8(a), 8(c), 8(d), 8(f), 8(k).

The Remedy

Having found that the Respondents violated the Act as set forth above, I shall order that it cease and desist there from and post remedial Board notices addressing the violations found.

The Respondents having discriminatorily discharged and refused to promote employees, they must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel requests that the notices be in the English, Spanish and Tagalog languages. There were employees who required the assistance of Spanish language translators in this hearing and the request for Spanish language notices is appropriate. There was no evidence that employees were only proficient in the Tagalog language and the request for Tagalog language notices is rejected.

As part of the remedy herein CGC seeks an order requiring Respondents to reopen the Henderson repair facility to the state in which it existed on March 3, 2003, the day UHI Vice President for Human Resources Henry Kelly imposed the hiring freeze, as a fully staffed key city repair shop.

Where the closing of a facility is discriminatorily motivated in violation of Section 8(a)(3) of the Act, as here, the Board may order a restoration of operations. *Fibreboard Paper Products Corp*., 379 U.S. 203, 209 (1964); *Coronet Foods v. NLRB*, 981 F.2d 1284 (D.C. Cir. 1993), enforcing 305 NLRB 79 (1991); *Reno Hilton Resorts*, 326 NLRB 1421 (1998). However, in cases where it would be too financially burdensome for an employer to reopen that remedy will not be ordered. *Lear Siegler, Inc*., 295 NLRB 857 (1989).

Respondents argue that a restoration order would be unduly burdensome to Respondent UHN because UHN does not have the equipment or space to adequately service the U-Haul rental fleet at Henderson and because UHN would incur large operating loses if Henderson were reopened.

Respondents' arguments presume that only UHN would bear the burden of a restoration order. However, I have previously found that UHN and UHI constitute a single employer and that UHN, AMERCO, UHI and Oxford constitute a single integrated employer. Thus, any financial burden involved in restoring the status quo would be borne by all members of the single integrated employer.

Respondents' contention that they do not have the equipment or space to adequately service the U-Haul rental fleet is ludicrous. The record has established that UHI and AMERCO built and designed the Henderson repair facility as a state-of-the-art garage complete with 26 bays to repair and maintain the U-Haul truck fleet arriving in the Las Vegas area. There is nothing comparable to the Henderson repair facility in Las Vegas. To suggest that the Decatur facility is superior to the Henderson repair facility cannot be supported by the facts. Moreover, all of the equipment used in Henderson was either removed to Decatur or can be retrieved internally through the U-Haul parts ordering system.

The Henderson repair facility itself was owned at the end of the trial by a member of the single integrated enterprise, Oxford, and was subleased to UHN. Thus, there should be no obstacle to physically reopening the Henderson property.

Respondents contend that they should not have to reopen a facility that was losing substantial amounts of money. The problem with this argument is that Respondents profit and loss statements for the Henderson repair facility reflect that until March 2003, it was operating close to its budgeted loss for the period September 2002 to March 2003. After that time as a result of Respondents' own unlawful actions, by reducing the labor force below its expected manpower levels through a hiring freeze and terminations, by imposing more onerous work rules and by subcontracting bargaining unit work, Henderson's operating losses were increased. Respondents' refusal to produce subpoenaed profit and loss statements from similar key city shops has led me to conclude that they have tolerated similar losses at comparable repair shops. Thus, the argument that reopening the Henderson repair shop would cause undue financial burden must fail.

Conclusions of Law

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

1. Respondents UHN and UHI are and have been at all times material a single employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondents AMERCO, UHI, UHN, and Oxford are and have been at all times material a single integrated enterprise engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. Respondents AMERCO, Five SAC Self Storage Corporation, and SAC Holding Corporation are and have been at all times material operating together as a joint venture engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent violated Section 8(a)(1) of the Act by engaging in the following acts and conduct:

   a. maintaining in handbooks and in notices statements telling employees that selecting or supporting a union will retard U-Haul's growth and employees career opportunities with U-Haul.

   b. maintaining in handbooks and in notices statements telling employees that employees must report work-related complaints to their supervisor and then to the president and chairman of the board.

   c. requiring employees to sign the System Member Confidentiality Agreement that prohibits employees from discussing wage and salary and other terms and conditions of employment with other employees, union representatives or other third parties like the Board.

   d. threatening employees with plant closure.

   e. threatening employees with discharge.

   f. creating the impression that Respondents were spying on employees' union activities.

   g. issuing and enforcing a rule prohibiting employees from talking about the Union.

   h. questioning employees about their and other employees' union activity.

   i. issuing and enforcing a rule prohibiting employees from wearing Union caps and glasses cords at work.

   j. telling employees it would be useless to select the Union.

   k. threatening employees with loss of jobs.

   l. telling employees that Respondents will no longer be lenient with work rules.

m. telling employees that they had threatened to shoot a union representative.

n. threatening employees with loss of overtime.

o. issuing and enforcing a rule prohibiting employees from engaging in concerted-protected activity during their lunch and break periods.

p. issuing written warnings to employees for presenting employee petitions to Respondents' managers.

q. refusing to allow employees to be represented during an interview investigating an incident that could lead to discipline.

r. threatening employees with loss of vacation pay.

s. threatening employees with not being rehired.

t. discharging supervisor Terry Hill on May 8, 2003 for refusing to participate in the commission of unfair labor practices.

u. questioning an employee without telling him that he did not have to participate in the interview, by failing to tell him that there would be no reprisals for his failure to participate and failing to tell him the purpose of the interview.

v. threatening employees that they would not be promoted because of their Union or other protected concerted activity.

w. denigrating bargaining unit employees because they chose the Union and filed charges with the National Labor Relations Board.

x. soliciting employees to bypass their collective bargaining representative.

6. Respondents violated Section 8(a)(1) and (3) of the Act by:

a. on March 3, 2003 imposing a hiring freeze.

b. on May 30, issuing written warnings to employees William Farran, Omar Armas, Joel King and Francisco Watkins.

c. since after May 7, 2003 requiring employees to sign leave of absence forms, more strictly enforcing absence and leave policy, changing the status of an employee returning from sick leave, prohibiting employees from leaving their work area without permission and increasing subcontracting of unit work.

d. on June 6, 2003, issuing a written warning to employee Alberto Banico.

e. since after May7, 2003 changing call in procedures and changing the practice of moving trucks in and out of bays.

f. on July 3, 2003 issuing written warnings to employees Russell Grizzle, Michael Kight, Jimmy Pagtulingan, Howard Calhoun, Corey Burkett, and Ted Taylor.

g. in September and December 2003 more strictly and discriminatorily enforcing efficiency standards.

h. on December 9, 2003 warning employee Larry Fuller.

i. on December 15, 2003 closing the Henderson repair facility.

j. on March 7, 2003 discharging employees Salvador Campos, Johnny DeGuzman, Jesus Jacobo and Jorge Garcia.

k. on April 22, 2003 discharging employee Mark Nance.

l. on May 15, 2003 discharging employee Aubry Church.

m. on May 22, 2003 discharging employee Cody Stewart.

n. on May 27, 2003 discharging employee Glenn Ellazar.

o. on May 30, 2003 discharging employees Scott Marks, Nelson Sandoval, and Alfred Magana.

p. on June 3, 2003 discharging employee Jon Jacks.

q. on June 10, 2003 discharging employee Heath Williams.

r. on July 2, 2003 discharging employee Francisco Watkins.

s. on July 3, 2003 discharging employee Joseph Vitek.

t. on July 10, 2003 discharging employee Nelson Castro.

u. on August 4, 2003 discharging employee Michael Kight.

v. on August 13, 2003 discharging employee William Farran.

w. on September 4 and 5, 2003 discharging employees Rolly Agonoy, Omar Armas, James Augustine, Corey Burkett, John Franick, Russell Grizzle, Tyrell Peterson and Ted Taylor.

x. on September 5, 2003 discharging employees Howard Calhoun, Abel Carreno, Antonio Herrera, and Elmer Tanglao.

y. on September 19, 2003 discharging employee Francisco Sandoval.

z. on October 2, 2003 discharging employees Joel King, Apollos Bisco and Don Collette.

aa. on December 9, 2003 discharging employees Alberto Banico, Robert Essig, Jesse Gilson and Glenn Lingao.

bb. on December 1o, 2003 discharging employee Jimmy Pagtulingan.

cc. on February 10, 2003 discharging employee Norm Snyder.

dd. on February 11, 2003 discharging employee Shawn Saunders.

ee. in September 2004 refusing to promote Michael Siefert to the AFM position.

7. Respondents violated Section 8(a)(1) and (4) of the Act by refusing to promote Michael Siefert to the AFM position.

8. Respondents violated Section 8(a)(1) and (5) of the Act by:

a. since May 7, 2003 refusing to recognize and bargain with the Union as the exclusive collective bargaining representative of employees in the following unit:

INCLUDED: All full time and regular part-time brake/tire specialists, detail specialists, engine specialists, mechanic express specialists, PM inspection specialists, pre/post inspection specialists, transmission specialists, van body specialists, mobile repair specialists, parts clerks, transfer drivers, repair dispatch specialists, and schedulers employed by the Employer at and out of its 1900 South Decatur Boulevard, Las Vegas, Nevada, and 989 South Boulder Highway, Henderson, Nevada repair facilities.

EXCLUDED: All other employees, office clerical employees, including the senior clerk, professional employees, guards and supervisors as defined in the Act.

b. since May 19, 2003 refusing to provide the Union with information necessary and relevant to its duties as collective bargaining representative of employees in the above unit.

c. by changing the following terms and conditions of employment of employees in the above unit without notice to or bargaining with the Union.

(1) requiring employees to sign leave forms.

(2) more strictly enforcing leave and absence policy.

(3) changing the status of an employee returning from sick leave.

(4) prohibiting employees from leaving their work bay without permission.

(5) by changing employee job classifications.

(6) by increasing subcontracting of bargaining unit work.

(7) by creating new call in procedures.

(8) by changing the practice of moving trucks in and out of bays.

(9) by conducting mandatory drug testing of bargaining employees.

(10) by more strictly and discriminatorily enforcing efficiency standards.

(11) by closing the Henderson repair facility.

(12) by eliminating the transfer driver classification.

(13) by unilaterally giving wage increases, granting free lunches, tools, and paid hours off to increase employee productivity, changing the number of hours mobile repair unit employees may charge for travel time for emergency calls, changing the job duties of bargaining unit employees, changing employee health benefits, and bypassing the Union and dealing directly with bargaining unit employees.

9. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

10. The Respondents did not otherwise violate the Act as alleged in the 5th complaint and in the May 28, 2004 complaint and the remaining complaint allegations will be dismissed.

ORDER

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.[162]

The Respondents U-Haul Co. of Nevada, Inc., U-Haul International, Inc., AMERCO, Oxford Life Insurance Company, Five SAC Self Storage Corporation and SAC Holding Corporation, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Refusing to recognize and bargain in good faith with International Association of Machinists and Aerospace Workers, Local Lodge 845, AFL-CIO as the exclusive collective bargaining agent of the employees in the following unit:

INCLUDED: All full time and regular part-time brake/tire specialists, detail specialists, engine specialists, mechanic express specialists, PM inspection specialists, pre/post inspection specialists, transmission specialists, van body specialists, mobile repair specialists, parts clerks, transfer drivers, repair dispatch specialists, and schedulers employed by the Employer at and out of its 1900 South Decatur Boulevard, Las Vegas, Nevada, and 989 South Boulder Highway, Henderson, Nevada repair facilities.

EXCLUDED: All other employees, office clerical employees, including the

[162] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

senior clerk, professional employees, guards and supervisors as defined in the Act.

b. Refusing to provide information to International Association of Machinists and Aerospace Workers, Local Lodge 845, AFL-CIO

c. Discharging or otherwise discriminating against any employee for supporting International Association of Machinists and Aerospace Workers, Local Lodge 845, AFL-CIO or for giving testimony in a National Labor Relations Board proceeding.

d. Maintaining in handbooks and in notices statements telling employees that selecting or supporting a union will retard U-Haul's growth and employees career opportunities with U-Haul.

e. Maintaining in handbooks and in notices statements telling employees that employees must report work-related complaints to their supervisor and then to the president and chairman of the board

f. Requiring employees to sign the System Member Confidentiality Agreement that prohibits employees from discussing wage and salary and other terms and conditions of employment with other employees, union representatives or other third parties like the Board.

g. Threatening employees with plant closure.

h. Threatening employees with discharge.

i. Creating the impression that Respondents were spying on employees' union activities.

j. Issuing and enforcing a rule prohibiting employees from talking about the Union.

k. Questioning employees about their and other employees' union activity.

l. Issuing and enforcing a rule prohibiting employees from wearing Union caps and glasses cords at work.

m. Telling employees it would be useless to select the Union.

n. Threatening employees with loss of jobs.

o. Telling employees that Respondents will no longer be lenient with work rules.

p. Telling employees that they had threatened to shoot a union representative.

q. Threatening employees with loss of overtime.

r. Issuing and enforcing a rule prohibiting employees from engaging in concerted-protected activity during their lunch and break periods.

s. Issuing written warnings to employees for presenting employee petitions to Respondents' managers.

t. Refusing to allow employees to be represented during an interview investigating an incident that could lead to discipline.

u. Threatening employees with loss of vacation pay.

v. Threatening employees with not being rehired.

w. Discharging supervisor Terry Hill on May 8, 2003 for refusing to participate in the commission of unfair labor practices.

x. Questioning an employee without telling him that he did not have to participate in the interview, by failing to tell him that there would be no reprisals for his failure to participate and failing to tell him the purpose of the interview.

y. Imposing a hiring freeze.

z. Issuing written warnings to employees.

aa. Requiring employees to sign leave of absence forms, more strictly enforcing absence and leave policy, changing the status of an employee returning from sick leave, prohibiting employees from leaving their work area without permission and increasing subcontracting of unit work.

bb. Changing call in procedures and changing the practice of moving trucks in and out of bays.

cc. More strictly and discriminatorily enforcing efficiency standards.

dd. Refusing to provide the Union with information necessary and relevant to its duties as collective bargaining representative of employees in the above unit.

ee. Changing the following terms and conditions of employment of employees in the above unit without notice to or bargaining with the Union:

(1) requiring employees to sign leave forms.

(2) more strictly enforcing leave and absence policy.

(3) changing the status of an employee returning from sick leave.

(4) prohibiting employees from leaving their work bay without permission.

(5) by changing employee job classifications.

(6) by increasing subcontracting of bargaining unit work.

(7) by creating new call in procedures.

(8) by changing the practice of moving trucks in and out of bays.

(9) by conducting mandatory drug testing of bargaining employees.

(10) by more strictly and discriminatorily enforcing efficiency standards.

(11) by closing the Henderson repair facility.

(12) by eliminating the transfer driver classification.

(13) by unilaterally giving wage increases, granting free lunches, tools, and paid hours off to increase employee productivity, changing the number of hours mobile repair unit employees may charge for travel time for emergency calls, changing the job duties of bargaining unit employees, changing employee health benefits, and bypassing the Union and dealing directly with bargaining unit employees.

ff. Threatening employees that they would not be promoted for engaging in Union or other protected concerted activity including giving testimony in a National Labor Relations Board proceeding.

hh. In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designated to effectuate the policies of the Act:

a. Recognize and bargain with International Association of Machinists and Aerospace Workers, Local Lodge 845, AFL-CIO as the exclusive collective bargaining representative of the employees in the above mentioned unit.

b. If requested by the Union rescind any changes made in your terms and conditions of employment, noted above, and reduce to writing and sign any agreement reached with the Union concerning these terms and conditions of employment.

c. Make Salvador Campos, Johnny DeGuzman, Jesus Jacobo, Jorge Garcia, Mark Nance, Cody Stewart, Glenn Ellazar, Scott Marks, Nelson Sandoval, Alfred Magana, Jon Jacks, Aubry Church, Heath Williams, Francisco Watkins, Joseph Vitek, Nelson Castro, Michael Kight, William Farran, Rolly Agonoy, Omar Armas, James Augustine, Corey Burkett, John Franick, Russell Grizzle, Tyrell Peterson, Ted Taylor, Howard Calhoun, Abel Carreno, Antonio Herrera, Elmer Tanglao, Francisco Sandoval, Joel King, Apollos Bisco, Don Collette, Alberto Banico, Robert Essig, Jesse Gilson, Glenn Lingao, Jimmy Pagtulingan, Norm Snyder, Shawn Saunders, Michael Siefert and Terry Hill whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

d. Reopen and reestablish as a key city repair facility our repair shop located at 989 South Boulder Highway, Henderson, Nevada and resume operation of this facility as it existed on March 3, 2003.

e. Furnish the Union with the information requested in its letters dated May 19, August 22 and December 11, 2003 and February 25, March 15 and March 19, 2004.

f. Within 14 days from the date of this Order, rescind or modify in a lawful manner, the following statements and forms:

In "What about Unions?" the statement that a union "would retard the growth of our company and your personal career-advancement opportunities."

In "What about Unions?" the statement that requires employees to report work-related complaints or problems to your supervisor and then tot he president and chairman of the board.

In our "System Member Confidentiality Agreement" the portions that prohibit employees from disclosing, disseminating or communicating wage and salary information.

g. Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges or refusal to promote of Salvador Campos, Johnny DeGuzman, Jesus Jacobo, Jorge Garcia, Mark Nance, Cody Stewart, Glenn Ellazar, Scott Marks, Nelson Sandoval, Alfred Magana, Jon Jacks, Aubry Church, Heath Williams, Francisco Watkins, Joseph Vitek, Nelson Castro, Michael Kight, William Farran, Rolly Agonoy, Omar Armas, James Augustine, Corey Burkett, John Franick, Russell Grizzle, Tyrell Peterson, Ted Taylor, Howard Calhoun, Abel Carreno, Antonio Herrera, Elmer Tanglao, Francisco Sandoval, Joel King, Apollos Bisco, Don Collette, Alberto Banico, Robert Essig, Jesse Gilson, Glenn Lingao, Jimmy Pagtulingan, Norm Snyder, Shawn Saunders, Michael Siefert and Terry Hill and within 3 days thereafter notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

h. Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings to William Farran, Omar Armas, Joel King, Francisco Watkins, Alberto Banico, Russell Grizzle, Michael Kight, Jimmy Pagtulingan, Howard Calhoun, Corey Burkett, Ted Taylor and Larry Fuller and within 3 days thereafter notify the employees in writing that this has been done and that the warnings will not be used against them in any way.

i. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and papers, and all other records, including an electronic copy of such records if stored in electronic form necessary to analyze the amount of backpay due under the terms of this Order.

j. Within 14 days after service by the Region, post at its Henderson and Decatur repair facilities in Henderson and Las Vegas, Nevada copies of the attached

notice marked "Appendix"[163] in both the English and Spanish languages. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at the Henderson and Decatur repair facilities at any time since February 26, 2003.

k. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply

IT IS FURTHER ORDERED that the 5th complaint and the May 28, 2004 complaint are dismissed insofar as they allege violations of the Act not specifically found.

Dated, San Francisco, California, September 30, 2005.

_____
John J. McCarrick
Administrative Law Judge

[163] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Chose not to engage in any of these protected activities

After a trial at which we appeared, argued and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees in both English and Spanish and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT refuse to recognize and bargain in good faith with INTERNATIONAL ASSOCIATION OF AEROSPACE WORKERS, LOCAL LODGE 845, AFL-CIO, (Union), as your certified collective bargaining representative in the following bargaining unit (unit):

Included: all full-time and regular part-time brake/tire specialists, detail specialists, engine specialists, mechanic express specialists, PM inspection specialists, pre/post inspection specialists, transmission specialists, van body specialists, mobile repair specialists, parts clerks, parts specialists, transfer drivers, and repair dispatch specialists employed by U-Haul Co. of Nevada, Inc., and U-Haul International, Inc., a single employer at its 1900 South Decatur Boulevard, Las Vegas, Nevada and 989 South Boulder highway, Henderson, Nevada repair facilities.

Excluded: All other employees, schedulers, office clerical employees, senior clerks, professional employees, guard and supervisors as defined in the Act.

WE WILL NOT make changes to your terms and conditions of employment without prior notice to the Union in order to permit the Union to bargain with us about those changes.

WE WILL NOT refuse to furnish information requested by the Union that is relevant and necessary to the Union’s performance of its duties as your collective bargaining representative.

WE WILL NOT fire you, cause you to quit, refuse to rehire you, refuse to promote you, impose a hiring freeze, or discipline you because of your union activities or because you selected the Union as your collective bargaining representative or because you engaged in protected-concerted activities, including giving testimony in a National Labor Relations Board proceeding.

WE WILL NOT close our repair facility or increase subcontracting of unit work because of your union activities or because you selected the Union as your collective bargaining representative.

WE WILL NOT drug test you and discharge you if you fail the drug tests because of your union activities or because you selected the Union as your collective bargaining representative.

WE WILL NOT more strictly enforce our attendance policies, change our work rules, change your hire date, more strictly enforce efficiency standards, prohibit you from leaving your work area because you selected the Union as your collective bargaining representative.

WE WILL NOT discharge your supervisors because they refused to commit or assist in the commission of unfair labor practices against you.

WE WILL NOT threaten you with discharge or physical harm, with closure of our facilities, with no longer being lenient to you about our work rules, with loss of your job, with refusal to promote you, with loss of overtime, with not being rehired, with loss of vacation pay because of your union activities or because you selected the Union as your collective bargaining representative or because you engaged in protected-concerted activities, including giving testimony in a National Labor Relations Board proceeding.

WE WILL NOT disparage you for selecting the Union to file charges on your behalf with the National Labor Relations Board.

WE WILL NOT ask you about your union activities or tell you it is futile to select the Union as your collective bargaining representative.

WE WILL NOT make it appear that we are spying on your Union or other protected-concerted activities.

WE WILL NOT require you to sign a “System Member Confidentiality Agreement” that prohibits you from discussing wages and salaries and other terms and conditions of employment among yourselves, union representatives or regulatory agencies like the National Labor Relations Board.

WE WILL NOT maintain in our employee handbooks, rules or other notices any requirement that you must report work-related problems to your supervisor and then to the president and chairman of the board of the U-Haul System.

WE WILL NOT maintain in our employee handbooks, rules or other notices statements telling you that selecting or supporting a union would retard the company growth or your career opportunities with us.

WE WILL NOT tell you that you may not talk about the Union at work under threat of being fired or that you may not wear chords, caps or other items of clothing with union insignia on them.

WE WILL NOT tell you that you may not engage in Union and protected-concerted activity at our facilities during you lunch and break periods.

WE WILL NOT deny your request to be represented by a union steward when we are questioning you in an investigatory interview.

WE WILL NOT in any other way restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the National Labor Relations Act.

WE WILL reopen, and reestablish as a Key City repair shop our repair facility located at 989 South Boulder Highway, Henderson, Nevada, and resume operation of this facility as it existed on March 3, 2003.

WE WILL offer reinstatement to Salvador Campos, Johnny DeGuzman, Jesus Jacobo, Jorge Garcia, Mark Nance, Cody Stewart, Glenn Ellazar, Scott Marks, Nelson Sandoval, Alfred Magana, Jon Jacks, Aubry Church, Heath Williams, Francisco Watkins, Joseph Vitek, Nelson Castro, Michael Kight, William Farran, Rolly Agonoy, Omar Armas, James Augustine, Corey Burkett, John Franick, Russell Grizzle, Tyrell Peterson, Ted Taylor, Howard Calhoun, Abel Carreno, Antonion Herrera, Elmer Tanglao, Francisco Sandoval, Joel King, Apollos Bisco, Don Collette, Alberto Banico, Robert Essig, Jesse Gilson, Glenn Lingao, Jimmy Pagtulingan, Norm Snyder, Shawn Saunders and Terry Hill to their former positions of employment with us with no loss of seniority or other benefits, **WE WILL** offer Michael Siefert the position of Area Field Manager and **WE WILL** make each of these individuals whole for any loss of wages and benefits, with interest, that they suffered as a result of their discharge or any other unlawful action taken against them.

WE WILL remove from our files any reference to the unlawful discharges and refusal to promote of the above named employees; any references to the discipline of William Farran, Omar Armas, Joel King, Francisco Watkins, Alberto Banico, Russell Grizzle, Michael Kight, Jimmy Pagtulingan, Howard Calhoun, Corey Burkett, Ted Taylor and Larry Fuller; and **WE WILL** not make reference to the permanently removed materials in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker and we will not use the permanently removed material against you.

WE WILL recognize and bargain in good faith with the Union as your designated collective-bargaining representative for the unit described above; **WE WILL** upon request from the Union rescind any changes we made in your terms and conditions of employment after February 26, 2003, including the drug testing of unit employees, closure of the Henderson repair facility at 989 South Boulder Highway, Henderson, Nevada, more strictly enforcing our absence and tardy policy, prohibiting you from leaving your work area, increasing the amount of unit work sent to outside garages, implementing a new call-in policy, changing our practice of moving trucks in and out of work bays, more strictly and discriminatorily enforcing efficiency standards, eliminating bargaining unit positions, unilaterally giving wage increases, granting free lunches, tools, and paid hours off to increase employee productivity, changing the number of hours mobile repair unit employees may charge for travel time for emergency calls, changing the job duties of bargaining unit employees, changing employee health benefits, and bypassing the Union and dealing directly with bargaining unit employees.

WE WILL offer to bargain in good faith with the Union concerning these and other terms and conditions of employment of unit employees.

WE WILL reduce to writing and sign any agreement reached with the Union concerning these and other terms and conditions of your employment.

WE WILL furnish the Union with the information requested in its letters dated May 19, August 22 and December 11, 2003, and February 25, March 15, and March 19, 2004.

WE WILL rescind or modify in a lawful manner, the following rules, statements and forms:

In "What about Unions?" the statement that a union "would retard the growth of our company and your personal career-advancement opportunities."

In "What about Unions?" the statement that requires employees to report work-related complaints or problems to your supervisor and then to the president and chairman of the board.

In our "System Member Confidentiality Agreement" the portions that prohibit employees from disclosing, disseminating or communicating wage and salary information.

WE WILL advise all of our system members in writing of these rescissions or modifications.

U-HAUL CO. OF NEVADA, INC., a Single Employer with U-HAUL INTERNATIONAL, INC.

(Respondent Employer)

Dated _____ By _____

(Representative) (Title)

U-HAUL INTERNATIONAL, INC., a Single Employer with U-HAUL CO., OF NEVADA, INC.

(Respondent Employer)

Dated _____ By _____

(Representative) (Title)

U-HAUL INTERNATIONAL, INC., AMERCO, OXFORD LIFE INSURANCE COMPANY and U-HAUL CO., OF NEVADA, INC., a Single Integrated Enterprise

(Respondent Employers)

Dated _____ By _____

U-HAUL INTERNATIONAL, INC., AMERCO, FIVE SAC SELF-STORAGE CORPORATIONAND SAC HOLDING CORPORATION, operating together as a joint venture

(Respondents)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Las Vegas Resident office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101-6637
(702) 388-6416, Hours: 8:30 a.m. to 5:00 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE RESIDENT OFFICE'S COMPLIANCE OFFICER, (702) 388-6008.

THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC RECORDS

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above. The final decision and this notice are available in either English or Spanish.